

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 15 (Kirinyaga County Acts No. 5)*



REPUBLIC OF KENYA

---

**KENYA GAZETTE SUPPLEMENT**

**KIRINYAGA COUNTY ACTS, 2018**

---

**NAIROBI, 21st August, 2018**

---

CONTENT

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

**THE KIRINYAGA INVESTMENT AND DEVELOPMENT  
AUTHORITY ACT, 2018**

**No. 5 of 2018**

*Date of Assent: 14th August, 2018*

*Date of Commencement: See section 1*

**ARRANGEMENT OF SECTIONS**

*Section*

**PART I—PRELIMINARY**

- 1—Short title.
- 2—Interpretation.
- 3—Purpose of the Act.

**PART II—KIRINYAGA INVESTMENT AND DEVELOPMENT  
AUTHORITY**

- 4—Establishment of the Authority.
- 5—Functions of the Authority.
- 6—Board of the Authority.
- 7—Functions of the Board.
- 8—Conduct of business.
- 9—Remuneration of the board.
- 10—Chief Executive Officer.
- 11—Staff of Authority.
- 12—Common seal of the Authority.
- 13—Protection from personal liability.
- 14—Liability for damages.
- 15—Corporate governance.
- 16—Annual report.

**PART III—FINANCES OF THE AUTHORITY**

- 17—Funds of the Authority.
- 18—Financial year.
- 19—Annual estimates.
- 20—Accounts.

21—Financial reports and Audit.

**PART IV—INVESTMENT MANAGEMENT**

22—Investment Principles.

23—Investment Powers.

24—Raising Capital.

25—Investment Strategy and Plan.

26—Investment or project appraisal and financial analysis.

27—Sustainability, Profitability and Competitiveness.

28—Financial sustainability.

29—Partnership.

30—Dividend policy.

**PART IV—GENERAL PROVISIONS**

31—Regulations.

32—Transfer of assets.

**SCHEDULE—Conduct of Business and Affairs of the Board.**



**KIRINYAGA INVESTMENT AND DEVELOPMENT  
AUTHORITY ACT, 2018**

**AN ACT of the County Assembly of Kirinyaga to provide for the establishment of legal and institutional framework for promotion and coordination of investment and development and for related purposes**

**ENACTED** by the County Assembly of Kirinyaga, as follow—

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Kirinyaga Investment and Development Authority Act, 2018 and shall come into force upon publication in the *Gazette*.

**Interpretation**

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

“authority” means the Kirinyaga Investment and Development Authority established by section 4;

“board” means the board of the Authority established by section 6;

“county Executive” means the Governor, Deputy Governor and the County Executive Committee of the County Government of Kirinyaga;

“county Executive Committee” means the county executive committee established in accordance with Article 176 of the Constitution; and

“executive committee member” means the County Executive Committee Member for the time being responsible for trade.

**Purpose 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) implement an efficient and transformative investment administration system and thereby encourage and expand investment in the County;
- (b) enhance financial and economic prudence in County Government investments;



**No. 5**      *Kirinyaga County Investment and Development Authority*      **2018**

- (c) establish an efficient and effective instrument for managing County Government investments;
- (d) enhance competitiveness of County Government investments;
- (e) promote, coordinate and facilitate local, domestic and foreign investment for social and economic development;
- (f) enhance county revenue base;
- (g) provide for mobilization of finances for investments;
- (h) provide for investment in socially beneficial enterprises aimed at benefiting the local communities;
- (i) enable the County Government to undertake Public Private Partnerships and joint ventures in areas that are beneficial to the County;
- (j) participate and support in the long-term development planning of the county;
- (k) participate and support in monitoring progress of implementation of strategic initiatives of the county;
- (l) monitor and report on the mountain cities development index.

**PART II—KIRINYAGA INVESTMENT AND DEVELOPMENT  
AUTHORITY**

**Establishment of the Authority**

4. (1) There is established an Authority to be known as the Kirinyaga Investment and Development Authority.

(2) The Authority shall be a body corporate with succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money or making investments;
- (c) entering into contracts; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

**Functions of the Authority**

5. The Authority shall be responsible for—

- (a) holding property and assets on behalf of the County Government for the purposes of investment and development;



**No. 5**      *Kirinyaga County Investment and Development Authority*      **2018**

- (b) negotiating and undertaking investments on behalf of the County Government for the purposes of generating revenue;
- (c) negotiating and 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) promoting local content absorption, technology transfer and value addition;
- (h) advising and facilitating the County Government and County residents on investment opportunities within and outside the County;
- (i) assisting and facilitating investors from within or outside the County to establish investments in the County;
- (j) promoting and facilitating investment in the County;
- (k) acting as the focal agency for investment promotion and facilitation in the county;
- (l) advising the County Executive on necessary and strategic policies; programs and plans to be adopted in order to attract and retain investments in the County;
- (m) promoting economic diplomacy aimed at advancing the investment and development interests of the County;
- (n) advising on the long-term and medium term strategic development plan;
- (o) monitoring progress of implementation of investments and strategic development programmes;
- (p) monitoring and reporting on the mountain cities development index;
- (q) carrying out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the County Executive.



**Board of the Authority**

6. (1) The management of the Authority shall vest in the Board which shall consist of—

- (1) a non-executive chairperson who shall be appointed by the Governor with the approval of the County Assembly;
- (2) the Chief Officer for the time being responsible for trade;
- (3) the Chief Officer for the time being responsible for finance;
- (4) the following persons who shall be appointed by the Executive Committee Member through a competitive process;
  - (i) a professional nominated from the dominant business association in the county;
  - (ii) one representative of the youth ;
  - (iii) one representative of women ;
  - (iv) one representative of persons living with disability; and
- (5) the Chief Executive Officer who shall be an *ex officio* member and secretary to the board.

(2) A person shall not be qualified for appointment as a Chairperson or a member appointed under subsection (1)(d) unless the person

- (a) a master's degree in economics, law, finance, trade, holds international relations, business or any related field from a recognized university;
- (b) has experience of at least five years in senior level management in public or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution;

(3) The term of office for the chairperson or a member appointed under sub section (1)(d) shall be five years, which may be renewed for one further term, after which the person shall retire from the Board for at least two years before being eligible for reappointment to the Board.

(4) Notwithstanding subsection (3), the members of the Board shall retire on rotation, in a manner that will ensure that not more than two thirds of the members retire at the same time.

(5) Not more than two thirds of the members of the Board under sub section (1) shall be of the same gender.



**Functions of the Board**

7. The functions of the Board shall be to—

- (a) ensure proper and efficient exercise 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) prepare 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 of the Board**

8. (1) The conduct and regulation of the business and affairs of the board shall be as set out in the schedule.

(2) Except as provided in the schedule, the board may regulate its own procedure.

**Remuneration of the Board**

9. The remuneration of the members of the Board shall be as determined by the Salaries and Remuneration Commission.

**Chief Executive Officer**

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

(2) The Chief Executive Officer shall be competitively recruited by the Board and appointed by the Executive Committee Member.

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

- (a) possess a master's degree in business administration, trade, international relations, finance or any other related field from a recognized university;
- (b) have had <sup>relevant</sup> experience in management for a period of not less than five years.

(4) The Chief Executive Officer shall hold office for a period of five years, on such terms and conditions of employment as the board may determine, and shall be eligible for re-appointment for a further and final term of five years.



**No. 5 Kirinyaga County Investment and Development Authority 2018**

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

(6) The Chief Executive Officer shall—

(a) in consultation with the Board, be responsible for the day to day management and direction of the affairs and transactions of the Authority, the exercise, discharge and performance of the objectives, functions and duties of the Authority and the general administration of the Authority;

(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 a notice in writing to the Chairperson of the Board;

(b) be removed from office by the Executive Committee Member on recommendation of the Board, for—

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

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

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

(iv) incompetence;

(v) bankruptcy.

**Staff of the Authority**

11. (1) 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 it may determine.

(2) The Authority shall—

(a) recruit staff through a competitive process;

(b) ensure that there are sufficient number of staff qualified in matters related to finance, economics, investment analysis and management, and project management.



**Common seal of the Authority**

12. (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.

(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 authorisation by the board under this section shall be presumed to have been dully given.

(3) The common seal of the Authority shall be authenticated by the signature of the Chairperson of the Board and the Chief Executive Officer.

**Protection from personal liability**

13. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the 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 on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expense 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 fund of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

**Liability for damages**

14. The provisions of Section 13 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**

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

**Annual report**

16. (1) The Authority shall, within three months after the end of each financial year, prepare and submit to the Executive Committee Member a



**No. 5 Kirinyaga County Investment and Development Authority 2018**

report of the operations of the Authority for the immediate preceding year.

(2) The annual report 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 thereunder to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) the financial statements prepared under section 21;
- (f) report of the Auditor-General prepared under section 21; and
- (g) such additional information or other material as the Executive Committee Member may request in writing.

(4) The Executive Committee 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 County Assembly.

(5) The Authority shall publish the annual report on its website.

### **PART III—FINANCES OF THE AUTHORITY**

#### **Funds of the Authority**

17. (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 realised from investments undertaken by the Authority;
- (c) such gifts, grants or monies received from any lawful source;
- (d) all monies borrowed from securities market or received as loans to the Authority; or



- (e) any monies from development partners, grants, strategic investors, and transfers.
- (2) The Authority shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the Authority and as prescribed under this Act.

**Financial year**

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

**Annual estimates**

19. (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 provision 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 authorisation of the board given with prior written approval of the Executive Committee Member.

### Accounts

20. The board shall cause to be kept proper books and records of accounts and assets of the Authority.

### Financial reports and audits

21. (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 IV—INVESTMENT MANAGEMENT

### Investment principles

22. The Authority shall be guided by the following principles while undertaking any investment—

- (a) value for money;
- (b) prudence in financial and investment management;
- (c) efficiency;
- (d) economy;
- (e) competitiveness in approach to business;
- (f) financial sustainability.

### Investment powers

23. Subject to any written law on governance of public investments, the Authority shall have powers to—



**No. 5 Kirinyaga County Investment and Development Authority 2018**

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

**Raising capital**

24. (1) Subject to the approval of the County Executive and where applicable the County Assembly, the Authority may raise capital by way of—

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

(2) The Authority shall not borrow money by way of loans or float any bonds or shares unless such borrowing is related to capital investments.

(3) Notwithstanding subsection (2), the Authority may borrow short-term loans for the purposes of maintaining sufficient cash flow in accordance with the Public Finance Management Act, 2012.

**Investment strategy and plan**

25. (1) The Authority shall prepare a five-year investment strategy and plan within four months after the Board is constituted which shall be forwarded to the County Executive for approval.

(2) The Executive Committee Member shall, within fourteen days of the approval of the investment strategy and plan by the County Executive, transmit it to the County Assembly for approval.

(3) The investment strategy and plan shall provide among others for—



**No. 5 Kirinyaga County Investment and Development Authority 2018**

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

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

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

(6) The Authority shall prepare annual plans for implementing the investment plan and strategy which shall be forwarded to the Executive Committee Member for discussion and approval by the County Executive and thereafter onward transmission to the County Assembly for approval by December each year.

**Investment or project appraisal and financial analysis**

26. 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**

27. (1) The Authority shall institute measures to ensure that —

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

(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 require at any time the Authority to undertake the assessment stipulated under subsection (2) in relation to any investment venture where the Executive Committee Member is of the opinion that the



**No. 5** *Kirinyaga County Investment and Development Authority* **2018**

venture does not meet the required threshold for sustainability, profitability and competitiveness.

(4) The Executive Committee Member may in consultation with the Board require the assessment under subsection (3) to be undertaken by an independent person or entity.

(5) Where an investment venture ceases to be sustainable, profitable or competitive, the Authority may—

- (a) restructure the investment;
- (b) merge the investment with other investments; or
- (c) terminate the investment by way of sale, disposal, transfer or liquidation where the investment was carried out by a subsidiary as the sole business.

**Financial sustainability.**

**28.** The Authority shall maintain the prescribed—

- (a) asset base to enable it realise its objectives;
- (b) liquidity ratios;
- (c) debt service plan;
- (d) any other information that the Executive Committee Member may from time to time prescribe.

**Partnership**

**29.** The Authority may enter into partnership or collaboration with any entity for the purposes of carrying out the objectives of this Act.

**Dividend Policy**

**30.** (1) The Authority shall, in consultation with the county executive committee establish a dividend policy, which shall be reviewed annually.

(2) The dividend policy shall stipulate among others for—

- (a) the prevailing business conditions under which dividend may be paid out;
- (b) minimum percentage of annual dividend payout to the county government;
- (c) any other matter as the Executive Committee Member may prescribe.



**PART VI-GENERAL PROVISIONS****Regulations**

31. (1) The Executive Committee Member may, on recommendation of the Board make regulations generally for the better carrying out of the objects of this Act.

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

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

**Transfer of Assets**

32. (1) The County Executive Committee shall identify property or assets owned by the county government that shall be transferred to the Authority for the purposes of implementing this Act.

(2) The property and assets transferred under this section shall be registered under the name of the Authority.

**SCHEDULE (S.8)****PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD****Vacation of Office**

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

**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 a 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 members of the Board otherwise agree, at least fourteen days' written notice shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be five 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 of their numbers 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.

#### **Conflict 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 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 member 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 Committee 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 paragraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board.
- (7) The Board shall report to the Executive Committee Member any determination by the Board that a conflict is likely to interfere significantly with the 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 determination 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 offense 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 of staff of the Board in the performance of their duties.



