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HOMA BAY COUNTY ACTS, 2023

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**THE HOMA BAY COUNTY LAKEFRONT DEVELOPMENT
CORPORATION ACT, 2023**

No. 2 of 2023

Date of Assent: 28th April, 2023

Date of Commencement: See Section 1

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**THE HOMA BAY COUNTY LAKEFRONT DEVELOPMENT
CORPORATION ACT, 2023**

AN ACT of the County Assembly of Homa Bay to make provision for the establishment of Homa Bay Lakefront Development Corporation as a Special Purpose Vehicle (SPV), to develop and manage economic and social activities of the lakefront, mobilize resources and for connected purposes.

ENACTED by the County Assembly of Homa Bay as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Homa Bay County Lakefront Development Corporation Act, 2023 and shall come into operation upon Publication in the *Kenya Gazette*.

Interpretation

2. In this Act, unless otherwise requires —

“Joint venture agreement” means the Homa Bay Lakefront Development Corporation Agreement negotiated and binding arrangement between member institutions to form and become a member of the Homa Bay Lakefront Development Corporation and shall be as set out in the first Schedule;

“Board of directors” means a group of persons elected by the shareholders of Homa Bay Lakefront Development Corporation to govern and manage its affairs;

“County Executive Committee Member” means the County Executive Committee Member for Blue Economy, Fisheries and Digital Economy

“County” has the meaning assigned to it in Article 176 of the Constitution;

Commodities means,” a raw material or primary agricultural product that can be bought and sold.’

Distributor means,” an agent who supplies goods to retailers or a purchaser.”

“Development” means the process of converting land to a new purpose by constructing buildings or making use of its resources;

“Governor” means the governor of Homa Bay County

“Member institutions” means Homa Bay County Government (HCG), Lake Basin Development Authority (LBDA), Kenya National Chambers of Commerce and Industry (KNNCI), Kenya Railways Corporation (KRC), Kenya Ports Authority (KPA).

“Managing director” means the person appointed under Section 10(4) of this Act

“Homa Bay Lakefront Development Corporation (HBLDC)” means a special purpose vehicle for the County Government of Homa Bay to oversee the Lakefront Development Projects;

“Lakefront” means the area or land at the edge of the lake;

“resource” means any factor of production or economy needed for profitable activity or with the capability of supplying necessary commodities and shall include natural resources, labor resources, economic resources and capital resources.

“Special purpose vehicle” means the investment partnership corporation to be jointly promoted by the parties hereto in accordance with and as indicated in this agreement.

“Supplier” means a person or organization that provides something needed such as a product or service”

“resource” means any factor of production or economy needed for profitable activity or with the capability of supplying necessary commodities and shall include natural resources, Labour resources, economic resources and capital resources;

“Special purpose vehicle” means the investment partnership corporation to be jointly promoted by the Parties hereto in accordance with and as indicated in this Agreement.

Objects

3. The objects of the Homa Bay Lakefront Development shall be carried out in consultation with the County Government of Homa Bay and the Municipality Board to—

- (a) create a master plan for lakefront development;
- (b) develop policy framework for investment and cooperation along the lakefront;
- (c) Mobilize for funds for the development and maintenance of the lakefront facilities; and
- (d) approve land allocation(s) and development plans at the lakefront.

Guiding Principles

4. All persons under this Act shall, in the performance of their functions, be guided by the following principles in addition to the National Values and Principles set out under Articles 10 and 174 of the Constitution—

- (a) the promotion of the social and economic development of all persons residing within and along the lakefront in order to ensure the realization of their economic and social rights under the Constitution;
- (b) equity and the need to ensure that persons residing along the lakefront areas can access facilities and services that are available;
- (c) the principles of public finance set out under Article 201 of the Constitution;
- (d) the promotion of good governance and accountability in the lakefront development and exploitation of resources within the counties;
- (e) coordinated public participation in the formulation, implementation and monitoring of plans and projects to be implemented on the lakefront;
- (f) the need to promote sustainable development in the exploitation of resources on or within the lakefront;
- (g) transparency and accountability in the implementation of programs and activities required to be undertaken pursuant to this Act, and
- (h) availability and access to both services, and timely, reliable information with respect to the development and exploitation of resources and projects and programs undertaken pursuant to this Act and the outcomes of such projects and programs.

Obligations of the County Government of Homa Bay on lakefront development

5. The County Government shall in realizing the objectives of this Act—

- (a) carry out an assessment of all resources within the Lakefront and the infrastructural requirements that would be necessary to ensure the effective exploitation and development of resources at the lakefront;
- (b) implement the objectives, policies and strategies to achieve

autonomous management of the resources at the lakefront;

- (c) identify any actual or potential effects of the lakefront exploitation, development which are of economic significance;
- (d) preserve or enhance the state of the whole or any part of the environment at the lakefront; and
- (e) empower the HBLDC to carry out lakefront activities.

PART II – ESTABLISHMENT OF THE HOMA BAY LAKEFRONT DEVELOPMENT CORPORATION

Establishment of the Homa Bay Lakefront Development Corporation

6. There is established an entity to be known as the Homa Bay lakefront Development Corporation as a Special Purpose Vehicle (SPV) to undertake Homa Bay lakefront development on behalf of the County Government of Homa Bay.

Body Corporate

7. The entity shall be a body corporate with perpetual succession, 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) making investments;
- (d) entering into contracts; and
- (e) 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.

Board of Directors

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

- (a) chairperson; nominated by the Governor and approved by the County Assembly
- (b) The Non- Executive Board of Directors of SPV (hereinafter referred to as “Board”) shall consist of Six (6) Members, of whom County Government of Homa Bay will nominate four and the Shareholders will nominate three from amongst themselves. Existing Board Members have the right to reject nominees who do not meet the minimum qualifications agreed.
- (c) The Managing Director who shall be an ex – officio member

and shall act as Secretary to the Board

- (d) The Governor shall ensure that not more than two thirds of the members of the corporation shall be of the same gender and that there is a youth representative.

(2) The inaugural chairperson shall be appointed by the Governor of the County Government of Homa Bay and all subsequent chairperson shall be elected from amongst the Board of Directors.

Appointment of Chairperson and vice chairperson

(3) A person is qualified for appointment as chairperson if the person—

- (a) is a citizen of Kenya;
- (b) holds a bachelor's degree from a recognized university;
- (c) has knowledge and experience of at least five years in governance;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in the field.
- (f) the vice chairperson of the board will be elected from the membership of the board during the first meeting of the board.

Qualification for appointment

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

- (a) is a citizen of Kenya;
- (b) holds a diploma in a field related to blue economy from a recognized university;
- (c) has experience of at least five (5) years in public administration and;
- (d) meets the requirements of Chapter Six of the Constitution.

Functions of the Board

9. The functions of the Board are to—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
- (b) advise the management of the Corporation generally on the exercise of the powers and the performance of the functions of the corporation;

- (c) approve the estimates of the revenue and expenditure of the Corporation; and
- (d) perform such other functions as are provided for under this Act or any other written law.

Conduct of Business

10. (1) The conduct and regulation of the business and affairs of the Board is as set out in the Schedule.

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

Remuneration of the Board

11. The remuneration of the members of the Board is determined by the member institutions in consultation with the Salaries and Remuneration Commission.

Managing Director

12. (1) There is a Managing Director of the Corporation who is the accounting officer of the corporation.

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

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

- (a) possess a degree from a recognized university; and
- (b) have had experience in management for a period of not less than five years.

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

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

(6) The Managing Director—

- (a) is subject to the direction of the Board, responsible for day-to-day management of the affairs of the Corporation;
- (b) is in consultation with the Board, responsible for the direction of

the affairs and transactions of the Corporation, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Corporation; and

- (c) may carry out any other function as may from time to time be assigned by the Board.
- (7) The Managing Director may—
 - (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
 - (b) be removed from office by the County 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 functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or
 - (v) discharged bankruptcy.

Staff Corporation

13. (1) The Corporation may appoint such staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may in consultation with the Salaries and Remuneration Commission determine.

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

The Common Seal of the Corporation

14. (1) The common seal of the Corporation, when affixed to a document and duly authenticated, is to be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section is presumed to have been duly given.

- (2) The common seal of the Corporation is authenticated by the signature of the chairperson of the Board and the Managing Director.
- (3) The vice-chairperson may, in the absence of the chairperson, in

any particular matter, authenticate the seal of the Corporation on behalf of the chairperson.

(4) The common seal of the Corporation is kept in the custody of the Managing Director or of such other person as the Board may direct, and must not be used except upon the order of the Board.

Protection from personal liability

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

(2) Any expenses incurred by any person in any suit or prosecution brought against the person in any court, in respect of any act which is done or purported to be done by the person under the direction of the Board, must, if the court holds that such act was done bona fide be paid out of the funds of the Corporation, unless such expenses are recovered by the person in such suit or prosecution.

Liability for damages

16. The provisions of Section 13 must not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to the person, their property or any of the person's interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Corporate governance

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

Annual report

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

(2) The annual report must provide information regarding the activities and plans of the Corporation during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, must include—

- (a) details of the performance of the Corporation against its key performance indicators;
- (b) report on the overall status of the investment portfolio and profitability of each investment venture including the Corporation's projections for the following year;
- (c) such information and other material as the Corporation may be required by this Act or regulations made thereunder to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) the financial statements prepared under Section 17 (8);
- (f) report of the auditor-general prepared under Section 17 (8); and
- (g) such additional information or other material as the executive member may request in writing.

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

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

PART III—GENERAL PROVISIONS

Financial Provisions

19. (1) There shall be charged on and paid out of the County Treasury Fund all payments required to be made from time to time by the County Government of Homa Bay under the terms of the Agreement.

(2) The County Government shall consider the Homa Bay Lakefront Development Corporation budget in its annual budgetary estimates as guided by the Public Finance Management Act, 2012.

(3) The County Government shall upon sus section (2) above disburse funds to HBLDC in installments within the financial year.

(4) All the expenditures of HBLDC shall be utilized to finance activities of HBLDC as shall be approved by the Board.

(5) The financial year of HBLDC shall run from 1st July to 30th June.

(6) The accounts of the HBLDC shall be audited by the Auditor General.

(7) Other resources of the HBLDC shall include extra budgetary resources such as;

(i) grants, donations, funds for projects and programs and technical assistance; and

(ii) income earned and or fees charged from activities undertaken by the HBLDC

(8) The board of directors will cause a financial statement of the corporation to be prepared and submitted to the county government of homa bay and the auditor general in every quarter of the financial year.

Amendment of the Agreement

20. If the Agreement is amended or modified, the County Assembly shall cause a notice of the amendment or modification and of the date when the amendment or modification comes or is deemed to have come into operation, to be published in the Gazette.

Regulations

21. The Homa Bay Lakefront Development Corporation may make regulations for carrying into effect the provisions of the Agreement.

Consequential legislation

22. The County Assembly shall enact any legislation required by this Act to be enacted to govern a particular matter.

SCHEDULES FIRST SCHEDULE**HOMA BAY LAKEFRONT DEVELOPMENT CORPORATION
JOINT VENTURE AGREEMENT**

THIS AGREEMENT is made the Day of
BETWEEN Homa Bay County Lake Development Corporation) of the
 one part and(name of the other party)
 having its registered office at (address)of
 the other part.

WHEREAS

(1) The parties hereto have agreed to co-operate for the sale of the products and related articles in Kenya

(2) Pursuant to such agreement the parties hereto have procured the formation of a company in Kenya (hereinafter called the company) which was incorporated on the day of under the name of Limited with an authorized share capital of Kshs. divided into ordinary shares of Kshs. each and an issued share capital of..... such shares of which have been allotted to a nominee of the supplier and anotherto a nominee of the distributor

NOW IT IS HEREBY AGREED as follows:

1. (1) Forthwith upon the execution of this agreement the parties shall cause the company to adopt new articles of association in the form of the draft which has been approved by the parties and to increase its authorized share capital to Kshs. divided intoshares of Kshs. each.

2. Each of the parties hereto undertakes with the other

(1) to perform and observe and (so far as it is able by the exercise of voting rights or otherwise so to do) to procure that the company will perform and observe all the provisions of the agreement;

(2) to take all necessary steps on its part to give full effect to the provisions of this agreement and

(3) without prejudice to the generality of the foregoing to exercise and procure that every person for the time being representing it will exercise or refrain from exercising any rights of voting at any meeting of the members or of the directors of the company so as to ensure the passing of any and every resolution necessary or desirable to procure that the affairs of the company are conducted in accordance with this agreement and otherwise to give full effect to the provisions of this agreement and

likewise so as to ensure that no resolution is passed which does not accord with such provisions.

4. The registered office of the company shall be at

5. As provided in the draft articles of association referred to in clause 1 hereof the number of directors of the company shall be of whom will be nominated by the holders of the A shares and by holders of the B shares and before the commencement of each financial year of the company the directors shall appoint one of their number to be the chairman of the board throughout such financial year and the person to be so elected shall be nominated in respect of alternate years by the holders of the A shares and by the holders of the B shares respectively. The chairman shall have no casting vote at meetings of the directors or at general meetings of the company. The first chairman of the board of the company shall be

6. The quorum for meetings of directors of the company and the procedure for transacting business at meetings of directors of the company shall be as prescribed in the draft articles of association referred to in clause 1 hereof.

7. The distributor will make available a member of its own staff to be the secretary of the company and such person shall carry out the normal duties of a secretary for the company without any charge being made to the company.

8. The distributor will arrange for the necessary accounting and other essential services and facilities to be provided for the company on terms to be approved by the directors of the company.

9. The accounts of the company shall be made up to the day of in each year.

10. The company shall open a bank account with and such account shall be operated by any two directors of the company or otherwise as may be determined by the directors of the company.

11. The directors of the company may appoint a manager for the day-to-day management of the affairs of the company and/or a manager for the direction of sales.

12. Except with the prior approval of the directors of the company

(1) the company shall not engage any employee;

(2) the company shall not make or incur any commitment for capital expenditure;

(3) the company shall not borrow or raise monies;

(4) the company shall not enter into any contract or engagement of a material nature outside the normal course of business.

13. Unless otherwise agreed between the parties hereto not less than seventy-five percent of the profits of the company available for distribution by way of dividend in respect of each financial year of the company shall be so distributed.

14. The supplier shall sell and the company shall buy such quantities of raw materials for the manufacture of the products as the company shall require not exceeding..... to be delivered in any one year (or month) and the price for such raw materials (a full list of which is set out in the schedule hereto) shall be such price as may be agreed between the company and the supplier **PROVIDED** that the price shall not be higher than the lowest price paid by any customer of the supplier during the year (or month) preceding such sale.

15. The company shall not purchase otherwise than from the supplier its requirements of raw materials for the manufacture of the products **PROVIDED** that the supplier is able to supply such requirements as notified to it from time to time and so long as the quantities delivery dates quality and prices offered by the supplier are (taken as a whole) at least as favorable to the company as products offered by third parties.

16. All sales of raw materials by the supplier to the company shall be on the terms and conditions of sale of the supplier.

17. The prices at which and terms and conditions on which the company sells the products to its customers shall be determined by the directors of the company and shall be reviewed half-yearly by them and it is the intention of the parties that the company shall sell the products to its customers at a price which should provide a profit on sales of (ten) per cent **PROVIDED** that if the company achieves an adequate return on the capital employed in its business the directors of the company may reduce such margin to less than (ten) percent either generally or in relation to any particular sale or sales.

18. If either the supplier or distributor shall wish to sell transfer or otherwise dispose of any shares in the company it shall offer the same to the other at a price equivalent to the fair value thereof which in default of agreement shall be determined by the auditors of the company acting as experts and not as arbitrators and if such offer shall not be accepted within one month, then the parties shall procure the company to be wound up forthwith.

20. The parties shall from time to time review the provisions of this agreement with a view to making any alterations which may appear desirable or expedient.

21. Any notice given hereunder shall be in writing and shall be delivered or sent by prepaid or registered or recorded delivery post to the registered address for the time being of the party to which it is addressed and any notice shall be deemed to be given if delivered at the time of delivery and if sent as aforesaid forty-eight hours after the same shall have been posted.

22. The provisions of this agreement shall apply notwithstanding any provisions to the contrary in the articles of association of the company for the time being in force.

23. This agreement shall be construed and shall take effect in accordance with the law of Kenya.

As WITNESS the parties hereto have set their hands on the day mentioned hereto above

(Signatures of Directors or authorized personnel and witnesses).