

SPECIAL ISSUE

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MAKUENI COUNTY BILLS, 2021

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**THE MAKUENI COUNTY INVESTMENTS AUTHORITY
(AMENDMENT) BILL, 2021**

A Bill for

AN Act of the Makueni County Assembly to amend the Makueni County Investments Authority Act, 2018 to provide for a legislative framework for county investments promotion, regulation and investments; and for matters incidental thereto

ENACTED by the Makueni County Assembly as follows —

Short title.

1. This Act may be cited as the Makueni County Investments Authority (Amendment) Act, 2021.

Amendment of Long Title

2. The Long Title to the Act is amended by deleting it and replacing with the following long title.

“An Act of the County Assembly of Makueni to provide for a legislative framework for County investments promotion, regulation and investments; and for matters incidental thereto.”

Amendment of Section 1

3. The Makueni County Investments Authority Act hereinafter referred to as the Principal Act is amended in Section 1 by deleting the word “Authority”

Amendment of section 2

4. The Principal Act is amended in Section 2 by—
(a) inserting the following new definitions in their proper alphabetical sequence—

By inserting the following phrase to the definition of Board immediately after the word Section 6 “or the Board of the Corporation as the case may be” Inserting the definition of Corporation to provide as follows;

“Corporation” means the Makueni County Commercial and Development Corporation established under Section 27A of the Act

Inserting definition of county entity to provide as follows;

“county entity” means an investment vessel in which the County holds a controlling interest and shall also include the Corporation or an entity in which the Corporation holds a controlling interest and is regulated under the Act.

Inserting paragraph (e) to the definition of local investor to provide as follows;

“Any other corporate entity in which the controlling interest is held by citizens of Kenya and incorporated in the Republic of Kenya”

Amendment of Section 4

4. The Principal Act is amended in Section 4 (2) by deleting paragraph (c).

Amendment of Section 5

5. The Principal Act is amended in Section 5(1) by inserting a new paragraph (p) to read as follows;

“(p) to identify and propose incentives which the County government may extend to investors who have been issued with an investment certificate under the Act”

Amendment of Section 6

6. The Principal Act is amended in Section 6 (1) (d) by deleting the words “in consultation with the Governor and with the approval of the County Assembly” appearing immediately after the word process.

Amendment of Section 7

7. The Principal Act is amended by deleting Section 7 (b) and replacing it with the following new Section 7(b)—

“to provide strategic leadership and policy direction for the Authority”

Amendment of Section 11

8. The Principal Act is amended in Section 11 in the following manner;

by deleting the following words appearing immediately after the word determine;

“in consultation with the Authority”

By introducing a new subsection (2) to provide as follows;

“(2) The County Executive Committee Member may where he deems fit, recommend to the County Public Service Board, to second such staff as may be necessary, to the Authority.”

Amendment of section 17(1) of

9. The Principal Act is amended in section 17(1) by deleting paragraph (b) .

Amendment of section 19(1) of.

10. The Principal Act is amended in Section 19 (2) by deleting paragraph (a)

Amendment of Section 27

11. The Principal Act is amended in Section 27 by deleting the word “Authority” and replacing it with the word “Corporation”.

Insertion of Section 27A

12. The Principal Act is amended by inserting a new Section 27A immediately after Section 27 to provide as follows;

27A. (1) There is established a Corporation to be known as the Makueni County Commercial and Development Corporation.

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

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money;
- (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.

(3) The Corporation shall be owned by the County Government.

Insertion of Section 27B

13. The Principal Act is amended by inserting a new Section 27B to provide as follows;

Functions of the Corporation

27B. The functions of the Corporation shall be;

- (a) To assess the investment potential in the County and advise the County government;
- (b) To identify potential investments that the County Government may engage in;
- (c) Advisory services – to commercial enterprises
- (d) Financial solutions to provide debt or equity to commercial enterprises
- (e) To carry out investment activities and business ventures for and on behalf of the County Government;
- (f) To participate in and finance joint venture companies in any investment the County desires to pursue;
- (g) To undertake any such activities and participate in any such ventures that are related to its functions under this Act which are commercially viable;

Insertion of Section 27C

14. The Principal Act is amended by inserting a new Section 27C to provide as follows;

Board of the Corporation

27C. (1) The management of the Corporation shall vest in the Board which shall consist of—

- (a) a non-executive chairperson who shall be appointed by the Governor;
- (b) chief officer for the time being responsible for finance;
- (c) the chief officer for the time being responsible for trade;
- (d) three professionals appointed by the County Executive Committee Member;
- (e) the Managing Director 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 of the Corporation unless the person—

- (a) holds a bachelor's degree in economics, law, finance, accounting, business or any related field from a recognized university.
- (b) has experience of at least seven years in senior level management in public or private sector; and

(c) meets the requirements of Chapter Six of the Constitution.

(3) The Chairperson and Board member of the Corporation shall serve for a term of three years, which may be renewable only once.

(4) Notwithstanding subsection (4), 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) The functions of the Board shall be to—

- (i) provide strategic direction and policy leadership to the Corporation;
- (ii) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
- (iii) approve the estimates of the revenue and expenditure of the Corporation; and
- (iv) perform such other functions as are provided for under this Act or any other written law.

(6) The conduct and regulation of the business and affairs of the Board shall be as set out in the First Schedule.

(7) Members of the Board earn such allowances and expenses as determined by the County Treasury in consultation with the Salaries and Remuneration Commission.

Insertion of Section 27D

15. The Principal Act is amended by inserting a new Section 27D to provide as follows;

27D (1) The office of a member of the Board of the Corporation shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) resigns in writing addressed to the County Executive Committee Member or the Governor in the case of the Chair;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) dies;
- (e) is removed from office by the appointing authority if he;
 - (i) has been absent from three consecutive meetings of the Board without permission of the Board; or

- (ii) is incapacitated by prolonged physical or mental illness; or
 - (iii) is otherwise unable or unfit to discharge his functions;
 - (iv) commits an act of gross misconduct;
 - (v) is in serious violation of the Constitution or any other written law.
- (8) Before a member of the Board is removed from Office, the appointing authority shall where applicable;
- (a) Give a three week (21) days' notice of intention to remove the member from office;
 - (b) The member shall respond to the notice within three week (21) days thereof;
 - (c) The appointing authority shall take into account the response by the member in making his decision to remove the member from office.

Insertion of Section 27E

16. The Principal Act is amended by inserting a new Section 27E to provide as follows;

Managing Director

27E (1) There shall be a Managing Director of the Corporation who shall be the Chief Executive Officer of the Corporation.

(2) The Managing Director shall be appointed by the CEC on the recommendation of the County Public Service Board after a competitive recruitment process.

(3) The County Public Service Board shall forward three names to the County Executive Committee Member, for appointment.

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

- (a) possess a Master's degree in business, accounting, finance or any other related field from a recognized university;
- (b) have had experience in management for a period of not less than five years.

Tenure of office

(5) The Managing Director shall hold office for a period of three (3) years, on such terms and conditions of employment as the County Public Service Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

Functions

(6) The Managing Director shall in consultation and with the approval of the Board—

- (a) be responsible for the day to day management and direction of the affairs and transactions of the Corporation;
- (b) exercise, discharge and perform its objectives, functions and duties;
- (c) be responsible for the general administration of the Corporation; and
- (d) carry out any other function as may from time to time be assigned by the Board.

Insertion of Section 27F

18. The Principal Act is amended by inserting a new Section 27F to provide as follows;

Vacation of Office of Managing Director

27F. 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;
 - (v) bankruptcy, pecuniary embarrassment; and

- (vi) good cause as may be determined by the Board of the Corporation.

Insertion of Section 27G

19. The Principal Act is amended by inserting a new Section 27G to provide as follows;

Staff of the Corporation

27G. (1) The Board of the Corporation shall appoint such staff as are necessary for the proper discharge of the functions of the Corporation under this Act, upon such terms and conditions of service as it may determine in consultation with the County Executive Committee Member.

(2) The Board may from time to time with the approval of the County Executive Committee Member, set up such administrative structures of the Corporation.

(3) The County Executive Committee Member may where he deems fit, recommend to the County Public Service Board, to second such staff as may be necessary, to the Corporation.

Insertion of Section 27H

20. The Principal Act is amended by inserting a new Section 27H to provide as follows;

The Common Seal of the Corporation

27H. (1) The common seal of the Corporation shall be kept in the custody of the Managing Director 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 Corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Corporation shall be authenticated by the signature of the Chairperson of the Board or the Managing Director.

Insertion of Section 27I

21. The Principal Act is amended by inserting a new Section 27I to provide as follows;

27I. (1) The funds and assets of the Corporation shall consist of—

- (a) such moneys as may be appropriated by the County Assembly for the purposes of the Corporation;
- (b) revenues realized from investments undertaken by the Corporation;
- (c) such gifts, grants or moneys received from any lawful source; and
- (d) all moneys borrowed from securities market or received as loans to the Corporation. Provided that the Corporation may not borrow any moneys without the approval of the County Executive Committee

(2) The Corporation shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the Corporation as prescribed under this Act.

Insertion of Section 27J

22. The Principal Act is amended by inserting a new Section 27J to provide as follows;

27J. The County Executive Committee Member shall cause to be prepared and tabled before the County Assembly an annual report of the state of investments undertaken by the Corporation.

Amendment of Section 28

23. The Principal Act is amended in Section 28 by deleting the word “Authority” and inserting the word “Corporation”
By inserting a new Subsection (2) that provides;

(2) Where the Corporation enters into an investment or business venture through a subsidiary company or a joint venture, it shall progressively divest of its shares in the subsidiary company or in the joint venture as and where necessary and such be determined by the Board with the approval of the County Executive Committee.

Amendment of Section 29

24. The Principal Act is amended in Section 29 in the following manner in the specified subsections;

Subsection (1) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (2) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (3) by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 30

25. The Principal Act is amended in Section 30 in the following manner in the specified subsections;

Subsection (1) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (4) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (5) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (6) by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 31

26. The Principal Act is amended in Section 31 by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 32

27. The Principal Act is amended in Section 32 in the following manner in the specified subsections;

Subsection (1) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (2) by deleting the word “Authority” and inserting thereof the word “Corporation”

Subsection (3) by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 33

28. The Principal Act is amended in Section 33 by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 34

29. The Principal Act is amended in Section 34 by deleting the word “Authority” and inserting thereof the word “Corporation”

Amendment of Section 39

30. The Principal Act is amended in Section 39 in the following manner;

Subsection (1) is amended by inserting the words “and Corporation” immediately after the word “Authority”

Subsection (2) is amended by inserting the words “or Corporation as the case may be” immediately after the word “Authority”

Amendment of Section 40

31. The Principal Act is amended in section 40 by deleting the entire subsection (2) and replacing it with the following new subsection 2;

“where parties to any dispute under this Act cannot resolve any such dispute amicably, they shall attempt mediation and if the same fails, such dispute shall be resolved through recourse to the ordinary court process.”

Insertion of a new Section 41

32. The Principal Act is amended by inserting a new Section 41 immediately after Section 40 to provide as follows;

“41. The County Executive Committee Member shall approve all the budgets and operational plans for the Authority and Corporation before the same can be implemented.

Insertion of a new Section 42

33. The Principal Act is amended by inserting a new Section 42 immediately after Section 40 to provide as follows.

Transitional Provision

“The County Executive Committee Member shall within 180 days of the date of constitution of the Corporation, in consultation with the Board members, oversee the phased transfer of the existing County investment entities to the Corporation.”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this amendment Bill is to enhance the regulatory and institutional framework for investing in Makueni County. The Bill seeks to create a sound regulatory framework so as to encourage, promote and coordinate investments in the County and to strengthen the County's investment functions.

The purpose of the Bill is to clarify the regulatory and investment functions under the Act. As it is presently, the Makueni County Investments Authority has a regulatory role as well as the power to make investments for and on behalf of the County Government. The Bill therefore separates the investing role from the Authority by establishing the Makueni County Commercial and Development Corporation whose functions include identifying potential investments that the County Government may engage in, carrying out investment activities and business ventures for and on behalf of the County Government and participating in and financing joint venture initiatives in any investment the County desires to pursue.

The Authority retains its regulatory role with functions such as receiving and processing applications for investment certificates and issuance of investment certificates and also to carry out investment promotion to showcase the County as the desired investment destination to potential investors.

The Bill amends the title of the Act to 'Makueni County Investment Act' so as to capture the two entities under the Bill-the Makueni County Investment Authority and the Makueni County Commercial and Development Corporation.

The operationalization of certain provisions of the proposed law shall entail an expenditure of public funds. The funds will be provided for in the estimates.

Dated 17th November, 2020.

NICODEMUS M. MUTHOKA,
*Chairperson, Committee on Trade, Industry,
Tourism a Cooperatives.*





