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CORPORATION ACT, 2016**

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**THE NYERI COUNTY INVESTMENT AND DEVELOPMENT
CORPORATION ACT, 2016**

AN ACT of the County Assembly of Nyeri to provide for the establishment of legal and institutional framework for promotion and co-ordination of investment and development and for connected purposes

ENACTED by the County Assembly of Nyeri, as follows —

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Nyeri County Investment and Development Corporation Act, 2016 and shall come into force upon publication in the *Kenya Gazette*.

Interpretation

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

“Corporation” means the Investment and Development Corporation established under section 4;

“County Assembly” means the County Assembly of Nyeri;

“County Executive Committee” means the County Executive Committee of the County Government of Nyeri;

“Board” means the Board of the Corporation established under section 6;

“Executive Member” means the County Executive Committee Member for the time being responsible for finance.

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) enhance financial and economic prudence in county government investments;
- (b) establish an efficient and effective instrument for managing county government investments;
- (c) enhance competitiveness of county government investments;
- (d) promote local investment and economic development;
- (e) enhance county revenue base;

- (f) provide for mobilization of finances for investments;
- (g) provide for investment in socially beneficial projects;
- (h) facilitate investments by County residents;
- (i) co-ordinate and facilitate investments in the County;
- (j) enable the County Government to undertake public private partnerships and joint ventures in areas that are beneficial to the county.

PART II—THE INVESTMENTS AND DEVELOPMENT CORPORATION

Establishment of the Corporation

4. (1) There is established a Corporation to be known as the Nyeri County Investments 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 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.

(3) The Corporation shall be owned by the County Government and may allocate not more than 40% of its shares to the public; and no one person shall own more than 10% of the total shares allocated to the public.

Function of the Corporation

5. The Corporation shall be responsible for —

- (a) holding property and assets on behalf of the County Government for the purposes of investment and development;
- (b) undertaking investments on behalf of the County Government for the purposes of generating revenue;
- (c) undertaking any development initiative for the County with a business or social purpose;
- (d) identifying strategic investment opportunities for the benefit of the County;

- (e) undertaking business ventures solely or in partnership with other entities or persons for the benefit of the County;
- (f) promoting local economic growth and job creation;
- (g) advising and facilitating the County Government and County residents on investment opportunities within and outside the County;
- (h) assisting and facilitating investors from within or outside the County to establish investments in the County;
- (i) promoting and facilitating investment in the County;
- (j) acting as the focal agency for investment promotion and facilitation in the County;
- (k) advising Executive Member and the County Executive Committee on necessary policies, programs and plans to be adopted in order to attract investments in the County;
- (l) sourcing funding for the county projects;
- (m) 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 Committee.

Board of the Corporation

6. (1) The Board of Management of the Corporation shall vest in the Board of Directors which shall consist of—

- (a) a non-executive chairperson who shall be competitively sourced and appointed by the Governor with the approval of the County Assembly;
- (b) chief officer for the time being responsible for finance;
- (c) the chief officer for the time being responsible for trade;
- (d) two professionals appointed by the Executive Member through a competitive process;
- (e) the Managing Director who shall be recruited through a competitive process and appointed by Executive Member.

(2) The Managing Director shall be the secretary to the Board.

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

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- (a) is a holder of at least a first degree in economics, law, finance, accounting, business or any related field from a recognized university;
- (b) has had at least five years relevant professional experience; and
- (c) meets the requirements of Chapter Six of the Constitution;

(3) The term of office for the Chairperson or a member appointed under subsection (1) (d) shall be three 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.

Functions of the Board

7. The functions of the Board shall be 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 the business

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 County Treasury in consultation with the County Public Service Board and must attract the right caliber of personnel.

Managing Director

10. (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 Executive Member in consultation with the Board and recruited through a competitive process.

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

- (a) possess at least a first 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.

(4) The Managing Director shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and may be eligible for re-appointment for a further renewable term of three years based on performance.

(5) The Managing Director shall —

- (a) in consultation with the Board, be responsible for the day to day management and 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;
- (b) carry out any other function as may from time to time be assigned by the Board.

(6) 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 recommendation of the Board, for—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, when the 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.

Staff of the Corporation

11. (1) The Corporation 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 Corporation shall—

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

The common seal of the Corporation

12. (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.

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 Corporation shall, 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 him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done *bona fide* be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damage

14. The provisions of section 13 shall not relieve the Corporation 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

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

Annual Report

16. (1) The Corporation shall, within three months after the end of each financial year, prepare and submit to the Executive Member a report of the operations of the Corporation for the immediate preceding year.

(2) The annual report shall 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, shall 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 21;
- (f) report of the Auditor-General prepared under section 21; and
- (g) such additional information or other material as the Executive Member may request in writing.

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

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

PART III—FINANCES OF THE CORPORATION**Funds of the Corporation**

17. (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 monies received from any lawful source;
- (d) all monies borrowed from securities market or received as loans to the Corporation.

(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 and as prescribed under this Act.

Financial Year

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

Annual estimates

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

(2) The annual budget shall make provision for all estimated expenditure of the Corporation 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 Corporation;
- (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 Corporation;
- (f) proper maintenance of the buildings and grounds of the Corporation;
- (g) maintenance, repair and replacement of the equipment and other property of the Corporation; and 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 Corporation except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Executive Member.

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

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

PART IV—INVESTMENT MANAGEMENT

Investment principles

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

value for money; prudence in financial and investment management; efficiency; economy; competitiveness in approach to business; financial sustainability.

Investment powers

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

- (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.

Capitalization

24. (1) Subject to the approval of the County Executive Committee and where applicable the County Assembly, the Corporation 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 the Executive Member.

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

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

Investment strategy and plan

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

(2) The Executive Member shall, within fourteen days of the approval of the corporate strategy and plan by the Executive Committee,

transmit it to the clerk of the County Assembly for tabling before the County Assembly for consideration and approval.

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

- (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 Executive Member may prescribe.

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

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

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

Investment or project appraisal and financial analysis

26. The Corporation 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 Corporation shall institute measures to ensure that—

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

(2) The Corporation 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 Member may require at any time the Corporation to undertake the assessment stipulated under subsection (2) in relation to any investment venture where the

Executive Member is of the opinion that the venture does not meet the required threshold for sustainability, profitability and competitiveness.

(4) The Executive 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 Corporation 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.

28. The Corporation shall maintain the prescribed—

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

Partnership

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

Dividend Policy

30. (1) The Corporation shall, in consultation with the Dividend policy. 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 matters as the Executive Member may prescribe.

PART VI—GENERAL PROVISIONS**Regulations**

31. (1) The Executive Member may, recommendations of the Board make Regulations generally for the better carrying out of the objects of this Act.

(2) Without 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 Transfer of assets. property or assets owned by the County Government that shall be leased to the Corporation for the purposes of implementing this Act.

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

SCHEDULE**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 Vacation of office. Government Officers may —

- (a) at any time resign from office by notice in writing to the Executive Member;
- (b) be removed from office by the Executive Member with the approval of the Governor, 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;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed;
 - (vi) fails to comply with the provisions of this Act relating to disclosure
 - (vii) gross misconduct; or
 - (viii) 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 one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least three members, 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 of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be four 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 members 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.

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 Member in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (5), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the Executive Member any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

Code of conduct

4. (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behavior to be observed by the members and staff of the Board in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comments.

(3) The Board shall include in its annual report a report on compliance with the code during the period covered by the annual report.

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.