

No.

2021

THE MAKUENI COUNTY GOVERNMENT

HIS EXCELLENCY THE GOVERNOR
KIVUTHA KIBWANA

I assent



Governor

25th May, 2021

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

THE MAKUENI COUNTY INVESTMENTS AUTHORITY (AMENDMENT) ACT, 2021

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	<p>THE MAKUENI COUNTY INVESTMENTS AUTHORITY (AMENDMENT) ACT, 2021</p> <p>An Act of the County Assembly of Makueni 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</p>
	<p>ENACTED by the Makueni County Assembly as follows —</p>
Short e.	<p>1. This Act may be cited as the Makueni County Investments Authority (Amendment) Act, 2021 and shall come into force upon publication in the Kenya gazette</p>
Amend ment of section 2.	<p>2. The Principal Act is amended in Section 2 by—</p> <ul style="list-style-type: none"> a) Amending the definition of Board immediately after the word Section 6 by inserting the words “or the Board of the Corporation as the case may be” b) “Corporation” means the Makueni County Commercial and Development Corporation established under Section 27A of the Act. c) “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. d) “local investor” means any other corporate entity in which the controlling interest is held by citizens of Kenya and incorporated in the Republic of Kenya.
Amend ment of Section 4	<p>3. The Principal Act is amended in Section 4 (2) by deleting paragraph (c).</p>
Amend ment of Section 5	<p>4. The Principal Act is amended in Section 5(1) by inserting a new paragraph (p) to read as follows;</p> <p><i>“(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”</i></p>
Amend ment of Section 6	<p>5. The Principal Act is amended in Section 6 (1) (d) by deleting the words “<i>in consultation with the Governor and with the approval of the County Assembly</i>” appearing immediately after the word process.</p>

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Amendment of Section 7	<p>6. The Principal Act is amended by deleting Section 7 (b) and replacing it with the following new Section 7(b)-</p> <p><i>“to provide strategic leadership and policy direction for the Authority”</i></p>
Amendment of Section 11	<p>7. The Principal Act is amended in Section 11 by ;</p> <p>a) deleting the words <i>“in consultation with the Authority”</i> appearing immediately after the word “determine”;</p> <p>b) inserting new subsection (2);</p> <p>“(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.”</p>
Amendment of section 17(1) of.	<p>8. The Principal Act is amended in section 17(1) by deleting para (b)</p>
Amendment of section 19(1) of.	<p>9. The Principal Act is amended in Section 19 (2) by deleting paragraph (a)</p>
Amendment of Section 27	<p>10. The Principal Act is amended in Section 27 by deleting the word <i>“Authority”</i> and replacing it with the word <i>“Corporation”</i>.</p>
Insertion of Section	<p>11. The Principal Act is amended by inserting a new Section 27A immediately after Section 27 to provide as follows;</p> <p>27A (1) There is established a Corporation to be known as the Makueni County Commercial and Development Corporation</p> <p>(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none"> (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; (b) borrowing money; (c) making investments;

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	<p>(d) entering into contracts; and</p> <p>(e) doing or performing all other functions for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.</p> <p>(3) The Corporation shall be owned by the County Government.</p>
<p>Insertion of Section 27B</p>	<p>12. The Principal Act is amended by inserting a new Section 27B to provide as follows;</p> <p><i>Functions of the Corporation</i></p> <p><i>27B. The functions of the Corporation shall be;</i></p> <p>(a) To assess the investment potential in the County and advise the County government;</p> <p>(b) To identify potential investments that the County Government may engage in;</p> <p>(c) Offer advisory services – to commercial enterprises</p> <p>(d) Financial solutions to provide debt or equity to commercial enterprises</p> <p>(e) To carry out investment activities and business ventures for and on behalf of the County Government;</p> <p>(f) To participate in and finance joint venture companies in any investment the County desires to pursue;</p> <p>(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;</p>
<p>Insertion of Section 27C</p>	<p>13. The Principal Act is amended by inserting a new Section 27C to provide as follows;</p> <p><i>Board of the Corporation</i></p> <p><i>27C. (1) The management of the Corporation shall be vested in the Board which shall consist of—</i></p> <p>a a non-executive chairperson who shall be appointed by the Governor;</p> <p>b chief officer for the time being responsible for finance;</p> <p>c the chief officer for the time being responsible for trade;</p> <p>d three professionals appointed by the County Executive Committee Member</p> <p>e the Managing Director who shall be an ex-officio member and secretary to the Board.</p> <p>2. A person shall not be qualified for appointment as a Chairperson or a member of the Corporation unless the person—</p> <p>a holds a bachelor's degree in economics, law, finance, accounting, business or any related field from a recognized university;</p>

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	<ul style="list-style-type: none"> 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. <p>3. The Chairperson and Board member of the Corporation shall serve for a term of three years which may be renewable only once.</p> <p>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.</p> <p>5. The functions of the Board shall be to—</p> <ul style="list-style-type: none"> a provide strategic direction and policy leadership to the Corporation; b ensure proper and efficient exercise of the powers and 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. <p>6. The conduct and regulation of the business and affairs of the Board shall be as set out in the First Schedule.</p> <p>7. Members of the Board earn such allowances and expenses as determined by the County Treasury in consultation with the Salaries and Remuneration Commission.</p>
<p>Insertion of Section 27D</p>	<p>14. The Principal Act is amended by inserting a new Section 27D to provide as follows;</p> <p>27D (1) The office of a member of the Board of the Corporation shall become vacant if the member—</p> <ul style="list-style-type: none"> 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; <ul style="list-style-type: none"> (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
<p>Insertion of</p>	<p>15. The Principal Act is amended by inserting a new Section 27E to provide as follows;</p> <p><i>Managing Director</i></p>

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Section 27E	<p><i>27E (1) There shall be a Managing Director of the Corporation who shall be the Chief Executive Officer of the Corporation.</i></p> <p><i>(2) The Managing Director shall be appointed by the CEC on the recommendation of the County Public Service Board after a competitive recruitment process.</i></p> <p><i>(3) The County Public Service Board shall forward three names to the County Executive Committee Member, for appointment.</i></p> <p><i>(4) To qualify for appointment as a Managing Director, a person must—</i></p> <ul style="list-style-type: none"><i>(a) possess a Master's degree in business, accounting, finance or any other related field from a recognized university;</i><i>(b) have had experience in management for a period of not less than five years.</i> <p><i>Tenure of office</i></p> <p><i>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.</i></p> <p><i>Functions</i></p> <p><i>6 The Managing Director shall in consultation and with the approval of the Board—</i></p> <ul style="list-style-type: none"><i>a be responsible for the day to day management and direction of the affairs and transactions of the Corporation;</i><i>b exercise, discharge and perform its objectives, functions and duties;</i><i>c be responsible for the general administration of the Corporation; and</i><i>d carry out any other function as may from time to time be assigned by the Board.</i>
Insertio n of Section 27F	<p><i>16. The Principal Act is amended by inserting a new Section 27F to provide as follows;</i></p> <p><i>Vacation of Office of Managing Director</i></p> <p><i>27F The Managing Director may—</i></p> <ul style="list-style-type: none"><i>a) at any time resign from office by issuing notice in writing to the Chairperson of the Board;</i><i>b) be removed from office by the County Executive Committee Member on recommendation of the Board, for—</i><ul style="list-style-type: none"><i>i. serious violation of the Constitution or any other written law;</i>

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	<ul style="list-style-type: none"> ii. <i>gross misconduct, whether in the performance of the functions of the office or otherwise;</i> iii. <i>physical or mental incapacity to perform the functions of office;</i> iv. <i>incompetence; and</i> v. <i>bankruptcy, pecuniary embarrassment</i> vi. <i>good cause as may be determined by the Board of the Corporation.</i>
<p>Insertion of Section 27G</p>	<p>17. The Principal Act is amended by inserting a new Section 27G to provide as follows;</p> <p><i>Staff of the Corporation</i></p> <p><i>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.</i></p> <p><i>(5) The Board may from time to time with the approval of the County Executive Committee Member, set up such administrative structures of the Corporation.</i></p> <p><i>(6) 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.</i></p>
<p>Insertion of Section 27H</p>	<p>18. The Principal Act is amended by inserting a new Section 27H to provide as follows;</p> <p><i>The Common Seal of the Corporation</i></p> <p>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.</p> <p>(2) The common seal of the Corporation, when affixed to a document and duly authenticated, shall be legally binding, 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.</p> <p>(3) The common seal of the Corporation shall be authenticated by the signature of the Chairperson of the Board or the Managing Director.</p>
<p>Insertion of Section 27I</p>	<p>19. The Principal Act is amended by inserting a new Section 27I to provide as follows;</p> <p><i>27I (1) The funds and assets of the Corporation shall consist of—</i></p> <p>(a) such moneys as may be appropriated by the County Assembly for the purposes of the Corporation;</p> <p>(b) revenues realized from investments undertaken by the Corporation;</p> <p>(c) such gifts, grants or moneys received from any lawful source; and</p>

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	<p>(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</p> <p>(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.</p>
Insertion of Section 27J	<p>20. The Principal Act is amended by inserting a new Section 27J to provide as follows;</p> <p>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.</p>
Amendment of Section 28	<p>21. The Principal Act is amended in Section 28 by;</p> <p>(1) substituting the word <i>“Authority”</i> and inserting the word <i>“Corporation”</i></p> <p>(2) <i>inserting a new Subsection (2) that provides;</i></p> <p>(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.</p>
Amendment of Section 29	<p>22. The Principal Act is amended in Section 29 in the following manner in the specified subsections;</p> <p>i. Subsection (1) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p> <p>ii. Subsection (2) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p> <p>iii. Subsection (3) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p>
Amendment of Section 30	<p>23. The Principal Act is amended in Section 30 in the following manner in the specified subsections;</p> <p>i. Subsection (1) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p> <p>ii. Subsection (4) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p> <p>iii. Subsection (5) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p> <p>iv. Subsection (6) by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p>
Amendment of Section 31	<p>24. The Principal Act is amended in Section 31 by deleting the word <i>“Authority”</i> and inserting thereof the word <i>“Corporation”</i></p>

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Amendment of Section 32	<p>26. The Principal Act is amended in Section 32 in the following manner in the specified subsections;</p> <ul style="list-style-type: none"> i. Subsection (1) by deleting the word “Authority” and inserting thereof the word “Corporation” ii. Subsection (2) by deleting the word “Authority” and inserting thereof the word “Corporation” iii. Subsection (3) by deleting the word “Authority” and inserting thereof the word “Corporation”
Amendment of Section 33	<p>27. The Principal Act is amended in Section 33 by deleting the word “<i>Authority</i>” and inserting thereof the word “<i>Corporation</i>”</p>
Amendment of Section 34	<p>28. The Principal Act is amended in Section 34 by deleting the word “<i>Authority</i>” and inserting thereof the word “<i>Corporation</i>”</p>
Amendment of Section 39	<p>29. The Principal Act is amended in Section 39 in the following manner;</p> <p>Subsection (1) is amended by inserting the words “<i>and Corporation</i>” immediately after the word “<i>Authority</i>”</p> <p>Subsection (2) is amended by inserting the words “<i>or Corporation as the case may be</i>” immediately after the word “<i>Authority</i>”</p>
Amendment of Section 40	<p>30. The Principal Act is amended in section 40 by deleting the entire subsection (2) and replacing it with the following new subsection 2;</p> <p>“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.”</p>
Insertion of a new Section 40A	<p>31. The Principal Act is amended by inserting a new Section 40A to provide as follows;</p> <p>40A. The County Executive Committee Member shall approve all the budgets and operational plans for the Authority and Corporation before the same can be implemented.</p>
Insertion of a new Section 40B	<p>32. The Principal Act is amended by inserting a new Section 40 B to provide as follows;</p> <p>Transitional Provision</p> <p>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</p>

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	investment entities to the Corporation.
The schedule	<p>First schedule of the principal Act be amended by inserting the following immediately after 1(b)(viii);</p> <p>Procedure for removal of a member of the Board</p> <p>(c) Before a member of the Board is removed from Office, the appointing authority shall where applicable;</p> <ul style="list-style-type: none">i. Give a three week's (21 days') notice of intention to remove the member from office;ii. The member shall respond to the notice within three week's (21 days) thereof;iii. The appointing authority shall take into account the response by the member in making his decision to remove the member from office.