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CONTENT

Act—

PAGE

The Bungoma County Investment and Development Corporation Act, 2019 1

**THE BUNGOMA COUNTY INVESTMENT AND DEVELOPMENT
CORPORATION ACT, 2019**

No. 7 of 2019

Date of Assent: 11th December, 2019

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ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

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

PART II —THE INVESTMENT AND DEVELOPMENT CORPORATION

- 4 — Establishment of the Corporation.
- 5 — Functions of the Corporation.
- 6 — Board of the Corporation.
- 7 — Functions of the Board.
- 8 — Conduct of Business.
- 9— Remuneration of the Board.
- 10 — Managing Director.
- 11 — Establishment of Investment Unit.
- 12 — Investment Unit.
- 13 — Staff of the Corporation.
- 14 —The Common Seal of the Corporation.
- 15 — Protection from personal liability.
- 16 — Liability for Damage
- 17— Corporate Governance
- 18— Annual Report

PART III—FINANCES OF THE CORPORATION

- 19— Funds of the Corporation.
- 20 — Financial year.
- 21 — Annual estimates.
- 22— Accounts.
- 23— Financial reports and audit.

PART IV—INVESTMENT MANAGEMENT

- 24 — Investment principles.
- 25 — Investment powers.
- 26— Raising of capital.
- 27 — Investment strategy and plan.
- 28 — Investment or project appraisal and financial analysis.
- 29 — Sustainability, profitability and competitiveness.
- 30 — Financial sustainability.
- 31— Partnership.
- 32— Dividend policy

PART V—GENERAL PROVISIONS

- 33 — Regulations.
- 34 — Transfer of assets.

SCHEDULE—CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

**THE BUNGOMA COUNTY INVESTMENT AND
DEVELOPMENT CORPORATION ACT, 2019**

AN ACT of the County Assembly of Bungoma to provide for the establishment of a legal and institutional framework for promotion and coordination of investment and development and for connected purposes

ENACTED by the County Assembly of Bungoma, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Bungoma County Investment and Development Corporation Act, 2019 and shall come into operation upon publication in the Kenya or County Gazette whichever comes earlier.

Short title and commencement.

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

Interpretation.

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

“County Executive Committee” means the County Executive Committee of the County Government of Bungoma

“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 Trade;

3. The purpose of this Act is to provide for the establishment of a legal and institutional framework for county investment and development in order to—

Purpose of the Act.

- (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) coordinate 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 INVESTMENT AND DEVELOPMENT CORPORATION

4. (1) There is established a Corporation to be known as the Bungoma County Investment and Development Corporation.

Establishment of the 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 wholly owned by the County Government and no shares shall be issued, transferred or allocated to any person.

5. The Corporation shall be responsible for—

Functions of the Corporation.

- (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 business, social and economic development purpose (s);
- (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 the County Executive committee through the County Executive Committee Member responsible on the necessary policies, programs and plans to be adopted in order to attract investments in the county;
- (l) 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.

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

Board of the
Corporation.

No. 7 *Bungoma County Investment and Development Corporation***2019**

- (a) a non-executive chairperson who shall be appointed by the Governor and approved by the county assembly;
 - (b) the County Secretary or his or her representative;
 - (c) the Chief Officer Finance and Economic Planning;
 - (d) the Chief Officer Trade and Industry;
 - (e) one officer representing the Legal department;
 - (f) one person representing the private sector in the County with at least form four certificate of education and meets the requirements of chapter six of the Constitution;
 - (g) one person representing community based organizations in the County with at least form four certificate of education and meets the requirements of chapter six of the Constitution;
 - (h) one person representing women in the County with at least form four certificate of education and meets the requirements of chapter six of the Constitution;
 - (i) one person representing the youth in the County with at least form four certificate of education and meets the requirements of chapter six of the Constitution;
 - (j) one person representing persons with disabilities in the County with at least form certificate of education and meets the requirements of chapter six of the Constitution;
 - (k) the officer in charge of Investments in the County;
 - (l) 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 under subsection (1) (a) unless the person—
- (a) holds a masters degree in economics, law, finance, accounting, business or any related field

from a recognized university;

- (b) has experience of at least five years in senior level management in public or private sector and in activities related to investments management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The term of office for the chairperson appointed under sub-section (1) (a) 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) A person shall not be qualified for appointment as a managing Director under subsection (1) (1) unless the person—

- (i) holds a first degree in economics, law, finance, accounting, business or any related field from a recognized university;
- (ii) has experience of not less than five years in senior management level in public or private sector; and
- (iii) meets the requirements of chapter six of the Constitution.

(5) The term of office for the managing Director shall be three years, which may be renewed for one further term.

(6) 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.

(7) Not more than two thirds of the members of the Board under subsection (1) shall be of the same gender.

7. (1) The functions of the Board shall be to promote and facilitate investment in the County by—

- (a) assisting foreign, local and potential investors to establish investments in the County; and
- (b) identifying and considering policy issues relating

Functions of the Board.

to investment and social development and recommend potential investment strategies to the County Executive Committee.

(2) Without prejudice to the generality of sub section (1), the Board shall do the following—

- (a) monitor and assess County Government Investment and social development programmes and activities and resolve any existing gaps;
- (b) assist any foreign, local or potential investor to obtain the necessary license and permit to establish any investment in the County;
- (c) create a forum in which the County Government and private sector can discuss and identify investment and social development policy issues and recommend to the County Government;
- (d) gather, analyze and compile information on economic developments and trends and submit the information to the Executive Committee member with the appropriate recommendations;
- (e) appraise the various investment and social development programs and activities to determine the extent to which those programmes and activities contribute to the achievement of the County Government policy objectives;
- (f) advise and facilitate the county residents on investment opportunities within and outside the county;
- (g) develop and coordinate policies and programmes required to promote social equity, economic growth, the creation of employment, reduction of poverty and containment of inequality and recommend to the Executive Committee Member;
- (h) develop strategic programmes and activities focused on critical social and economic needs in the County especially in areas that have direct impact on strengthening the potential of creation

of employment by the private sector and local communities and address poverty reduction;

- (i) utilize the private sector, civil societies and local communities' capacity and synergy to promote efficiency and effectiveness of economic planning and social development;
- (j) promote local economic growth and job creation in the County;
- (k) advise the county executive committee on necessary policies, programs and plans to be adopted in order to attain investments in the County; and
- (l) generally carry out any other activity that is necessary for the enhancement of social and economic development in the County.

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

Conduct of business.

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

9. The chairperson and members of the Board shall be paid such allowances and expenses as may be determined by the Salaries and Remuneration Commission.

Remuneration of the Board.

10. (1) There shall be a Managing Director of the Corporation who shall be the chief executive officer of the Corporation.

Managing Director.

(2) The Managing Director shall be appointed by the County executive member in consultation with the Board and recruited through a competitive process

(3) A person shall not be qualified for appointment as a managing Director under subsection (2) unless the person—

- (i) holds a first degree in economics, law, finance, accounting, business or any related field from a recognized university;
- (ii) has experience of not less than five years in senior management level in public or private

sector; and

- (iii) meets the requirements of chapter six of the Constitution.

(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 shall be eligible for re-appointment for a further and final term of three years.

(5) The Managing Director shall be an *ex-officio* member of the Board and shall have no right to vote at any meeting of the Board.

(6) 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.

(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 member on recommendation to 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.

11. (1) The head of the investment unit shall be the officer responsible for the management of the day-to-day

Establishment of
Investment Unit.

activities of the unit and head of the secretariat of the Board.

(2) The head officer shall be competitively recruited

12. (1) The County Public Service Board shall appoint or second such qualified officers and staff as it's necessary for the proper functioning of the Investment unit and Board and upon terms and conditions as the Board shall determine.

(2) The management structure of the investment unit shall be developed, established and where necessary varied by the Board with the approval of the County Public Service Board.

13. (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.

Staff of the Corporation.

(2) The Corporation shall—

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

14. (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.

The common seal of the Corporation.

(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.

15. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the

Protection from personal liability.

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 have been 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.

16. The provisions of section 16 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.

Liability for damages.

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

Corporate governance.

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

Annual report.

(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 24;
- (f) report of the Auditor-General prepared under section 24; and
- (g) such additional information or other material as the County Executive Member may request in writing.

(3) The County 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 shall after considering the report, make recommendations to the county executive committee on appropriate ways of effectively implementing the Act.

PART III—FINANCES OF THE CORPORATION

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

Funds of the Corporation.

- (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;

No. 7 *Bungoma County Investment and Development Corporation***2019**

- (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 for the performance of the functions of the Corporation and as prescribed under this Act.

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

Financial Year.

21. (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.

Annual estimates.

(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
- (h) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as

the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee for final approval.

(4) No expenditure shall be incurred for the purposes of the 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 County executive member.

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

Accounts.

23. (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—

Financial reports and
audit.
No. 12 of 2003.

- (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

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

Investment
principles.

- (a) value for money;
- (b) prudence in financial and investment

management;

- (c) efficiency; and effectiveness
- (d) economy;
- (e) competitiveness in approach to business;
- (f) financial sustainability.

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

- (a) establish subsidiaries, holding entities or joint ventures for undertaking any business ventures 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.

26. (1) Subject to the approval of the County Executive Committee and the County Assembly, the Corporation may raise capital by way of— Raising of Capital.
No. 18 of 2012.

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

(2) The Corporation shall not borrow money by way of loans or float any bonds 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 the Public Finance Management Act, 2012.

27. (1) The Corporation shall prepare at least a ten-year corporate investment strategy and plan which shall be Investment strategy
and plan.

approved by the county executive committee.

(2) The County Executive Committee Member responsible for the department 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 County 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 strategy or plan after 5 years in order to align it with the prevailing market and investment trends.

(6) The Corporation shall prepare annual plans for implementing the investment plan and strategy.

28. 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.

Investment or project appraisal and financial analysis.

29. (1) The Corporation shall institute measures to ensure that—

Sustainability, profitability and competitiveness.

- (a) its operations and investments are sustainable and profitable;

No. 7 *Bungoma County Investment and Development Corporation*

(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 County 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 shall 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.

30. The Corporation shall maintain the prescribed—

Financial
sustainability.

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

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

Partnership.

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

Dividend policy

(2) The dividend policy shall stipulate among others

for—

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

PART VI—GENERAL PROVISIONS

33. (1) The executive member shall, on recommendation of the Board make Regulations generally for the better carrying out of the objects of this Act.

Regulations.

(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.

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

Transfer of assets.

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

SCHEDULE

(s. 8)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. A member of the Board other than the County Government officers may— Vacation of office

- (a) at any time resign from office by notice in writing to the executive member;
- (b) be removed from office by the governor with the advice of the CEC in the case of the chairperson, if the person —
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding hundred thousand shillings;
 - (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 otherwise unfit to discharge his duties as a member of the Corporation; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure.

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. Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least 4 members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total 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 five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

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:

Conflict of interest.

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 (1), 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

2019

No. 7

fine not exceeding one hundred thousand shillings, or both.

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. Code of conduct.

(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 statement 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.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally Execution of Interest.

6. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose. Minutes.