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**THE INVESTMENT PROMOTION (AMENDMENT)
BILL, 2020**

A Bill for

**AN ACT of Parliament to amend the Investment
Promotion Act and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Investment Promotion (Amendment) Act, 2020.

Short title.

2. Section 2 of the Investment Promotion Act, in this Act referred to as “the principal Act” is amended —

Amendment of section 2 of No. 6 of 2004.

(a) by deleting the definition of the word “Minister” and substituting the therefor the following new definition —

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to investment promotion.

(b) by inserting in the proper alphabetical sequence the following new definitions —

“Board” means the Board established under section 16;

“Council” means the National Investment Council established under section 26;

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

No. 2 of 2012.

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to investment promotion in the county;

“county public service board” means the county public service board established in accordance with section 57 of the County Governments Act; and

No. 17 of 2012.

“Managing Director” means a person appointed under section 23;

3. Section 3 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection —

Amendment of section 3 of No. 6 of 2004.

(4) The Authority may request clarification and additional information relating to the proposed investment, in writing, in support of an application for an investment certificate.

4. The principal Act is amended by deleting section 16 and substituting therefor the following new sections —

Amendment of section 16 of No. 6 of 2004.

Board of Authority.

16. (1) The management of the Authority shall vest in a board which shall comprise —

- (a) a chairperson appointed by the President with the approval of Parliament;
- (b) the Principal Secretary responsible for matters relating to finance or their designated representative, in writing;
- (c) the Principal Secretary responsible for matters relating to trade and industry or their designated representative, in writing;
- (d) the Principal Secretary responsible for matters relating to devolution or their designated representative, in writing;
- (e) the chief executive officer of the Export Processing Zones Authority established under the Export Processing Zones Act;
- (f) the chief executive officer of the Export Promotion Council;
- (g) two members, one man and one woman nominated by the Council of County Governors appointed by the Cabinet Secretary; and

No. 12 of 1990.

(h) the Managing Director of the Authority who shall be an *ex-officio* member of the board, secretary to the board and the Chief Executive Officer of the Authority.

(2) The Managing Director shall have no right to vote at any meeting of the board.

(3) The appointment of the chairperson and the members of the board shall be by notice in the *Gazette*.

(4) The alternative representatives of the members referred to under subsection (1) (b), (c) and (d) shall have authority to exercise the powers and functions of the designating authority in relation to matters before the board.

5. The principal Act is amended by inserting the following new section immediately after section 16 —

Amendment of section 16 of No. 6 of 2004.

Qualifications for appointment.

16A. A person shall be qualified for appointment as a member of the board if that person —

- (a) holds a degree from a university recognised in Kenya;
- (b) has knowledge and at least five years demonstrable experience in the business sector;
- (c) meets the requirements of Chapter Six of the Constitution;
- (d) has not been adjudged bankrupt; and
- (e) has not been convicted of an offence and sentenced to imprisonment for at least six months.

6. The principal Act is amended by deleting section 17 and substituting therefor the following new section—

Amendment of section 17 of No. 6 of 2004.

Term of office.

17. A member of the board appointed under section 16(1) (a) or (g) shall hold office for a term of four years and is eligible for reappointment for one further term.

7. The principal Act is amended by deleting section 18 and substituting therefor the following new section —

Amendment of
section 18 of No.
6 of 2004.

Vacation of office.

18. The office of a member of the Board appointed under section 16(1) (a) or (g) shall become vacant if that person —

- (a) is unable to perform the functions of their office by reason of mental or physical infirmity;
- (b) is otherwise unable or unfit to continue serving as a member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) in the case of the Chairperson, resigns in writing addressed to the President;
- (g) in the case of a member appointed under section 16(1) (g), resigns in writing addressed to the Cabinet Secretary;
- (h) fails to declare their interest in any matter being considered or to be considered by the Board; or
- (i) dies.

8. The principal Act is amended by deleting section 19.

Amendment of
section 19 of No.
6 of 2004.

9. The principal Act is amended by deleting section 20 and substituting therefor the following new section —

Amendment of section 20 of No. 6 of 2004.

Remuneration of Board members.

20. The members of the Board shall be paid such remuneration and allowances as the Salaries and Remuneration Commission shall determine.

10. The principal Act is amended by deleting section 22.

Amendment of section 22 of No. 6 of 2004.

11. The principal Act is amended by deleting section 23 and substituting therefor the following new section —

Amendment of section 23 of No. 6 of 2004.

Managing Director.

23.(1) There shall be a Managing Director of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

(2) A person is qualified for appointment as Managing Director of the board if that person —

- (a) holds a masters degree from a university recognised in Kenya;
- (b) has knowledge and at least seven years experience in the business sector;
- (c) meets the requirements of Chapter Six of the Constitution;
- (d) has not been adjudged bankrupt; and
- (e) has not been convicted of an offence and sentenced to imprisonment for at least six months.

12. The principal Act is amended by inserting the following new section immediately after the proposed section 23 —

Amendment of section 23 of No. 6 of 2004.

Tenure of office of
Managing Director.

23A. The Managing Director shall hold office for a term of five years and is eligible for reappointment for one further term.

Functions of the
Managing Director.

23B. (1) The Managing Director shall be the chief executive officer of the Authority and secretary to the Board.

(2) In exercise of functions under this Act, the Managing Director shall, subject to the direction of the Board —

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Authority;
- (e) cause to be prepared for the approval of the Board —
 - (i) the strategic plan and annual plan of the Authority; and
 - (ii) the annual budget and audited accounts of the Authority; and
- (f) perform such other duties as may be assigned to the Managing Director by the Board.

Removal from office
of Managing Director.

23C. The Board may terminate the appointment of the Managing Director in accordance with the Managing Director's terms and conditions of service for —

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;

- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

13. The principal Act is amended by deleting section 24 and substituting therefor the following new section —

Amendment of section 24 of No. 6 of 2004.

Staff of the Authority.

24.(1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

14. The principal Act is amended by deleting section 25 and substituting therefor the following new section —

Amendment of section 25 of No. 6 of 2004.

Protection from personal liability.

25.(1) No matter or thing done by an officer or an employee of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the officer or employee so acting, personally liable for any action, claim or demand.

(2) Subsection (1) shall not relieve the Authority from liability to pay compensation or damages to any person for any injury to that person, or other loss caused by the exercise of any power conferred by this Act or any other written law or by the failure of any works of the Authority.

15. Section 26 of the principal Act is amended —

Amendment of section 26 of No. 6 of 2004.

(a) in paragraph (b) by deleting sub paragraph (v) and substituting therefor the following new sub paragraph —

(v) devolution;

- (b) by deleting sub paragraph (e) and substituting therefor the following new paragraph —
- (e) eight persons appointed by the President to represent the private sector, each of whom has distinguished himself in the field of law, economics, commerce, industry or management; and
- (c) inserting the following new paragraph immediately after the proposed new paragraph (e) —
- (f) four persons nominated by the Council of County Governors to represent the interests of the counties.

16. The principal Act is amended by inserting the following new section immediately after section 26 —

Amendment of section 26 of No. 6 of 2004.

Equity in appointments.

26A. The President shall, while appointing the members of the Council, ensure gender equity, representation of persons with disability, youth and marginalised groups.

Investment in counties.

26B. In considering an entitlement to an investment certificate for a local or a foreign investor, the Authority shall consult the county executive committee member in the respective county in which the investment is to be undertaken.

County Investment Unit.

26C. (1) Each county executive committee member shall by notice in the county Gazette designate a unit within the county to be responsible for matters relating to investment promotion in the county.

(2) The Unit shall be headed by the Chief Officer responsible for trade within the county.

(3) The respective county public service board shall assign, from within the county public service such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Unit under this Act.

Functions of the
County Investment
Unit.

26D. The functions of the Unit shall be
to –

- (a) facilitate investment opportunities in the county including securing the community approval and by providing land where required for investment purposes;
- (b) formulate policies that will allow ease of doing business in the county;
- (c) participate in investment promotion activities beneficial to the county for specific investment projects in collaboration with the Authority; and
- (d) advise the county executive committee member on matters relating to investment in the county;
- (e) identify and facilitate in consultation with the Authority projects within the county that are ready for investment;
- (f) facilitate community engagement and review of potential investment projects and obtain local endorsement for any county-based government incentives; and
- (g) work closely with the Authority to provide effective investor aftercare and support the Authority in facilitating reinvestment and upgrading of current investments.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

This Bill seeks to amend the Investment Promotion Act to ensure the participation of County Governments in the promotion of trade in the country. The Bill seeks to also include the participation of county governments in the formulation and implementation of policies and strategies formulated by the Kenya Investment Authority to attract investors, both foreign and local in the counties.

Further, the Bill seeks to streamline the management of the Authority by outlining the specific qualifications for appointment of Board members and their tenure of office. The constitution of the office of the Managing Director has also been enhanced.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments. Paragraph 7 of Part II of the Fourth Schedule to the Constitution designates trade development and regulation as a devolved function.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 6th May, 2020.

ALICE MILGO,
Senator.

Section 2 of No. 6 of 2004 which it is proposed to amend—

2. Definitions

In this Act, unless the context otherwise requires —

“Authority” means the Kenya Investment Authority continued under section 14;

“foreign investor” means —

- (a) a natural person who is not a citizen of Kenya;
- (b) a partnership in which the controlling interest is owned by a person or persons who are not citizens of Kenya; or
- (c) a company or other body corporate incorporated under the laws of a country other than Kenya.

“investment” means the contribution of local or foreign capital by an investor, including the creation or acquisition of business assets by or for a business enterprise and includes the expansion, restructuring, improvement or rehabilitation of a business enterprise;

“investment certificate” means an investment certificate issued under this Act;

“licence” includes a registration, permit, approval or authorization required by law regardless of how it is described;

“local investor” means—

- (a) a natural person who is a citizen of Kenya;
- (b) a partnership in which the partnership controlling interest is owned by a person who is a citizen of Kenya;
- (c) a company incorporated under the laws of Kenya, in which the majority of shares are held by a person who is a citizen of Kenya; or
- (d) a trust or trust corporation established under the Laws of Kenya, in which the majority of trustees and beneficiaries are citizens of Kenya.

“Minister” means the Minister responsible for matters relating to Investment.

Section 3 of No. 6 of 2004 which it is proposed to amend—

3. Applications

(1) A local investor may apply to the Authority for an investment certificate.

(2) A foreign investor who intends to invest in Kenya may apply to the Authority for an investment certificate.

(3) An application for an investment certificate shall be in the prescribed form.

(4) The Authority may request clarifications and additional information.

Section 4 of No. 6 of 2004 which it is proposed to amend—

4. Entitlement to certificate

(1) An applicant shall be entitled to an investment certificate if—

- (a) the application is complete and satisfies the applicable requirements under this Act;
- (b) the amount to be invested by a foreign investor is at least one hundred thousand United States of America dollars or the equivalent in any currency;
- (c) the amount to be invested by a local investor is at least one million shillings or the equivalent in another currency; and
- (d) the investment and the activity related to the investment are lawful and beneficial to Kenya.

(2) In determining whether an investment and the activity related to the investment are beneficial to Kenya for the purposes of subsection (1)(d), the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraphs (a), (b) and (c), and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h) —

- (a) creation of employment for Kenyans;
- (b) acquisition of new skills or technology for Kenyans;
- (c) contribution to tax revenues or other Government revenues;
- (d) a transfer of technology to Kenya;
- (e) an increase in foreign exchange, either through exports or import substitution;
- (f) utilization of domestic raw materials, supplies and services;
- (g) adoption of value addition in the processing of local, natural and agricultural resources;
- (h) utilization, promotion, development and implementation of information and communication technology;

- (i) any other factors that the Authority considers beneficial to Kenya.

Section 16 of No. 6 of 2004 which it is proposed to amend—

16. Board of Authority

(1) The Authority shall have a board with responsibility for the overall direction and management of the Authority.

(2) The board of the Authority shall consist of the following —

- (a) a Chairman appointed by the President;
- (b) the managing director of the Authority;
- (c) the secretary to the Cabinet;
- (d) the permanent secretaries in the ministries responsible for matters relating to —
 - (i) finance;
 - (ii) trade and Industry;
 - (iii) agriculture;
 - (iv) lands;
 - (v) local authorities; and
 - (vi) planning.
- (e) the chief executive of the Export Processing Zones Authority under the Export Processing Zones Act (Cap. 517);
- (f) the chief executive of the Export Promotion Council; and
- (g) six members appointed by the Minister.

(3) A person shall not be appointed as the Chairman or a member under subsection (2)(g) unless he has distinguished himself in the field of law, economics, commerce, industry or management.

Section 17 of No. 6 of 2004 which it is proposed to amend—

17. Term of office of Chairman, appointed members

The Chairman or a member appointed under section 16(2)(g) shall hold office for a period of three years and shall be eligible for reappointment.

Section 18 of No. 6 of 2004 which it is proposed to amend—

18. Resignation of Chairman, appointed members

(1) The Chairman may resign by written resignation addressed to the President.

(2) A member appointed under section 16(2)(g) may resign by written resignation addressed to the Minister.

Section 19 of No. 6 of 2004 which it is proposed to amend –

19. Removal of Chairman, appointed members

(1) The President may remove the Chairman, and the Minister may remove a member appointed under section 16(2)(g), on a ground set out in subsection (2).

(2) The grounds referred to in subsection (1) are the following—

- (a) the Chairman or member is absent without reasonable excuse from three consecutive meetings of the board of the Authority of which he has had notice;
- (b) the Chairman or member becomes bankrupt;
- (c) the Chairman or member is convicted of an offence involving dishonesty, fraud or moral turpitude;
- (d) the Chairman or member is incapacitated by reason of prolonged physical or mental illness from performing his duties as the Chairman or member; or
- (e) the Chairman or member is otherwise unable or unfit to discharge the functions of his office.

Section 20 of No. 6 of 2004 which it is proposed to amend—

20. Allowances of board members

The Authority shall pay the members of the board of the Authority such allowances and expenses as are determined by the Minister.

Section 22 of No. 6 of 2004 which it is proposed to amend—

22. Secretary of board

The managing director of the Authority shall be the secretary of the board of the Authority.

Section 23 of No. 6 of 2004 which it is proposed to amend—

23. Managing director of Authority

(1) The board of the Authority shall appoint a managing director who shall be the chief executive of the Authority and who, subject to the directions of the board, shall be responsible for the day to day running of the Authority.

(2) The terms and conditions of employment of the managing director shall be determined by the board of the Authority.

(3) A person shall not serve as the managing director for more than eight years.

Section 24 of No. 6 of 2004 which it is proposed to amend—

24. Other staff

(1) The Authority may appoint such other staff in addition to the managing director as the Authority considers advisable.

(2) The terms and conditions of employment of the staff of the Authority, other than the managing director, shall be determined by the Authority.

Section 25 of No. 6 of 2004 which it is proposed to amend—

25. Immunity

No member of the staff of the Authority or member of the board of the Authority or of a committee of the board shall be personally liable for anything done or omitted in good faith under this Act.

Section 26 of No. 6 of 2004 which it is proposed to amend—

26. Council established

The National Investment Council is hereby established as an unincorporated body consisting of the following members —

- (a) a Chairman who shall be the President or a Minister designated by the President;
- (b) the Ministers responsible for matters relating to—
 - (i) finance;
 - (ii) trade and industry;
 - (iii) agriculture;
 - (iv) lands;
 - (v) local authorities;
 - (vi) planning;
 - (vii) tourism and information; and
 - (viii) environment, natural resources and wildlife.
- (c) the Governor of the Central Bank of Kenya;
- (d) the chairman of the board of the Authority; and
- (e) twelve persons appointed by the President to represent the private sector, each of whom has distinguished himself in the field of law, economics, commerce, industry or management.