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**THE LAMU COUNTY INVESTMENT AND SOCIAL DEVELOPMENT
COUNCIL BILL, 2016**

A Bill for

An Act of the County Assembly of Lamu to provide for the establishment of legal and institutional framework for promotion, co-ordination of investment and social development and for connected purposes.

ENACTED by the County Assembly of Lamu as follows—

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Lamu County Investment and Social Development Council Act, 2016 and shall come into force on a date that the County Executive Committee may determine.

Interpretation.

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

“Council” means the Lamu Investment and Social Development Council;

“Unit” means the Lamu Investment and Social Development Unit;

Conduct of Business and Affairs of the Council

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

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

Objects of the Act.

3. The purpose of this Act is to establish a legal and institutional framework for economic and social development in Lamu County 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 and social development;
- (e) enhance County revenue base;
- (f) provide for investment in socially beneficial projects;
- (g) facilitate investments by County residents;
- (h) co-ordinate and facilitate investments in the County; and

Performance
guiding
principles.

- (i) enable the County Government to undertake public private partnerships and joint ventures in areas that are beneficial to the County.

4. In the exercise of the powers or the performance of the functions under this Act, the County Executive Committee and the Council shall be guided by the following principles—

- (a) public participation and financial transparency;
- (b) partnerships with private enterprises and businesses, other public institutions and the international community;
- (c) innovative approach in the performance duties and functions;
- (d) safeguarding public assets and efficient use of resources;
- (e) protection of the interests of the marginalised, persons with disability, women and the youths;
- (f) local ownership and sustainability;
- (g) working with integrity and professionalism in a collaborative and co-operative manner with all stakeholder; and
- (h) respond to and support diverse needs and interests and work to achieve social justice.

PART II — INVESTMENT AND SOCIAL DEVELOPMENT COUNCIL

Establishment
of the Council.

5. (1) There is established a Council to be known as the Lamu Investment and Social Development Council.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) receiving, borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing any act which may lawfully be done or performed by a body corporate for the proper performance of its functions under this Act.

Composition
of the Council.

- 6.** (1) The Council shall consist of—
- (a) a Chairperson appointed by the Governor;
 - (b) the County secretary or his or her representative, who shall be the secretary;
 - (c) one officer representing the County Department responsible for matters relating to finance and planning;
 - (d) one officer representing the County Department responsible for matters relating to trade and industry;
 - (e) one officer representing the County Department responsible for matters relating to agriculture;
 - (f) one officer representing the County Department responsible for matters relating to lands;
 - (g) County Attorney or his or her representative;
 - (h) one officer representing the County Department responsible for matters relating to Infrastructure;
 - (i) one officer representing the County Department responsible for matters relating to environment, natural resources and wildlife;
 - (j) three persons representing the private sector in the County appointed by the Governor; and
 - (k) three persons representing community based organisations in the County appointed by Governor.
- (2) Apart from sub section (1) (g), all the officers representing the County Departments referred to under sub section (1) shall be appointed by the relevant County Executive Committee members.

Term of office.

- 7.** (1) The Chairperson or a member appointed under sub section 6 (1) (j) or (k) shall hold office for a period of three years and shall be eligible for reappointment.
- (2) The Chairperson or members may resign in writing addressed to the Governor.

Removal
from and
vacation of
office.

- 8.** (1) The Governor may remove the Chairperson or a member appointed under sub section 6 (1) (j) or (k) for—
- (a) inability to perform the functions of the office by reason of mental or physical infirmity;
 - (b) failure to declare his or her interest in any matter being considered or to be considered by the Council; or
- (2) The office of Chairperson or member shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent from three consecutive meetings of the Council without reasonable cause;
- (e) resigns in writing addressed to the Governor;
- (f) is removed from office by the Governor;
- (g) dies.

Remuneration
of Members.

9. The Chairperson and members of the Council shall be paid such allowances and expenses that may be determined by the County Public Service Board in consultation with Salaries and Remuneration Commission.

Functions
of the Council.

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

- (a) assisting foreign, local and potential investors to establish in the County; and
 - (b) identifying and considering policy issues relating 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 Council 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, analyse 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 programmes and activities to determine the extent to which those programmes and activities contribute to achievement of County Government policy objectives;

- (f) advise and facilitate the county residents on investment opportunities within and outside the County;
- (g) develop co-ordinated 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) utilise the private sector, civil societies and local communities capacities 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, programmes and plans to be adopted in order to attract investments in the County;
- (l) generally carry out any activity that is necessary for the enhancement of economic and social development in the County.

Conduct of
business of
the Council.

11. (1) The business and affairs of the Council shall be conducted in accordance with the Schedule, to this Act.

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

Committees
of the Council.

12. (1) The Council may establish such committees and *ad hoc* committees as it may deem necessary for the performance of its functions.

(2) Membership of the committees established under sub section (1) shall comprise members of the Council and experts from both public and private sectors.

(3) The Council may either generally or in any particular case, delegate to any committee established under sub section (1) the exercise of any of the powers or the performance of any of the functions of the Council under this Act and the committee shall report to the Council on its activities.

(4) A committee established under sub section (1) may invite experts from research, academia and industry to attend its meetings to advise on any matter before the committee and the final recommendations for presentation to the Council.

Protection
from personal
liability.

13. (1) No member of the Council shall be personally liable for any act done or omitted in good faith in carrying out any of the functions of the Council under this Act.

(2) The provision of sub section (1) shall not relieve the Council of the liability to pay compensation or damages to any person for any injury caused by the exercise of any power conferred by this Act.

Establishment
of Investment
Unit.

14. (1) There shall be an Investment Unit within the department for the time being responsible for matters relating to trade and industry.

(2) The Investment Unit shall be the secretariat of the Council and as such shall provide technical and professional services to the Council and as such, shall—

- (a) provide technical, financial and legal expertise to the Council regarding investments and social development;
- (b) be the resource centre on matters relating to investments and social development;
- (c) manage property and assets of the Council on behalf of the Council for the purposes of investment and social development in the County;
- (d) undertake investments on behalf of the Council to generate revenue for the County Government;
- (e) undertake development initiative for the County as is determined by the Council;
- (f) identify strategic investment opportunities for the benefit of the County to recommend to the Council;
- (g) assist and facilitate investors from within or outside the County to establish investments in the County;
- (h) act as the focal agency for investment promotion and facilitation in the County;
- (i) conduct research and gap analysis to ensure continuous performance improvement in the implementation of projects;
- (j) assist contracting departments, where the Investment Unit considers it necessary, to design, identify, select, prioritise, appraise, evaluate and negotiate projects;

- (k) maintain a record of all project documentation;
 - (l) promote, both locally, nationally and internationally, the opportunities for investment in the County in accordance with the decision of the Council;
 - (m) carry out such other roles as may be necessary for the implementation of the objects and purpose of this Act; and
 - (n) perform such other functions as may, from time to time, be assigned by the County Executive Committee and the Council.
- 15.** The Executive Committee Member shall issue guidelines for —
- (a) the administrative and financial framework of the Investment Unit;
 - (b) the relationship of the unit with other County departments and organisations; and
 - (c) the operations and conduct of the affairs of the unit.
- 16.** (1) The head of the Investment Unit shall be the Investment officer responsible for the management of the day-to-day activities of the Unit and head of the Secretariat of the Council.
- (2) The head officer shall be competitively recruited by the County Public Service Board and appointed by the Governor.
- (3) The head officer shall be an ex-officio member of the Council and shall have no right to vote at the meetings of the Council.
- 17.** (1) The County Public Service Board shall appoint such qualified officers and staff as are necessary for the proper functioning of the Investment Unit and Council and upon terms and conditions that the Board may determine.
- (2) The management structure of the Investment Unit shall be developed, established and where necessary varied by the Investment Unit in consultation with the County Public Service Board with the approval of the Governor.
- 18.** (1) The Council shall, within three months after the end of each financial year, cause to prepare and submit to the executive member a report of the operations of the Council and the Investment Unit for the immediate preceding year.
- (2) The annual report shall provide information on the activities and operations of the Council and the Investment Unit regarding the promotion and facilitating investment in the County

Operational guideline for the Unit.

Head of the Unit.

Other officers and staff.

Annual Report.

during the year to which it relates together with its immediate plans and priorities and, without limiting the generality of the foregoing, the report shall include—

- (a) details of the performance of the Council and the Investment Unit against the key performance indicators;
- (b) the overall status of the investments and profitability of each investment venture established including the projections for the following year;
- (c) measures taken to implement corporate governance principles and practices;
- (d) the financial statements for the year; and any other information and
- (e) material required to be in the report by this Act or regulations made thereunder.

PART III— FINANCIAL PROVISIONS

Capitalisation
of the Council.

19. The funds of the Council shall consist of—

- (a) moneys allocated and appropriated to the Council from the County Revenue Fund by the County Assembly from time to time;
- (b) any grants, gifts, donations, loans or other endowments given to the Council;
- (c) monies that may vest in or accrue to the Council in the course of the exercise or performance of the functions of the Council under this Act; and
- (d) monies from any other lawful source accruing to the Fund.

(2) The Council may invest any surplus of funds received by it for the benefit of development in the County.

(3) The Council shall not borrow money or float any bonds unless such borrowing is related to capital investments.

(4) Notwithstanding subsection (3), the Unit may borrow short-term loans on behalf of the Council for the purposes of maintaining sufficient cash flow in accordance with Public Financial Management Act, 2012 and subsequent related legislations.

Expenditure of
Council.

20. (1) There shall be paid from the funds of the Council—

- (a) operational expenses incurred in the administration and operations of the Council; and
- (b) monies as are necessary for the functioning of Board.

Financial year.

21. The financial year of the Council shall be the period of twelve months beginning on the first day of July and ending on the thirtieth day of June in the following year.

Annual estimates.

22. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council and Investment Unit for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council and Investment Unit for the relevant financial year and, in particular, shall provide for —

- (a) payment of the allowances and other charge in respect of the members of the Council and staff of the Investment Unit;
- (b) allocation for investments to be established, supported or financed in the year;
- (c) payment of gratuities and other charges in respect of benefits which are payable to the members of the Council;
- (d) training, research and development of activities of the Council;
- (e) General development expenditure in the financial year; and
- (f) maintenance, repair and replacement of the equipment and other property of the Unit.
- (g) reserve funds to meet future or contingent liabilities in respect of investment and social development as the Council may deem appropriate.

(3) The financial estimates referred to under subsection (1) and (2) shall —

- (a) differentiate between recurrent and disbursement expenditure; and
- (b) itemise every activity that the Council and the Investment Unit intends to undertake in the coming financial year under a separate vote head.

(4) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and submitted to the Executive Committee Member for tabling in the County Assembly for its approval.

(5) No expenditure shall be incurred by the Council or Investment Unit except in accordance with the annual estimates approved under subsection (4).

(6) Upon the approval of the estimates by the County Assembly, all monies appropriated for purposes of the Council and Investment Unit shall be paid into the Council's account.

Accounts.

23. The Investment Unit shall prepare financial accounts and an inventory of any monies allocated to it and the Council, any financial support received and any fees or other payments received from private parties or project company as the case may be.

PART IV— INVESTMENT MANAGEMENT

Investment powers.

24. Subject to any written law governing of public investments, the Council may—

- (a) establish companies, holding entities or joint ventures for undertaking any business venture to realize its objects; and
- (b) invest in property or real assets, bonds, securities, bank deposits, trust funds, Treasury Bills or any investment venture approved by the County Treasury.

Investment strategy and plan.

25. (1) The Council shall prepare and submit to the County Executive Committee for approval a six-year corporate investment strategy and plan which shall provide among others —

- (a) the source of investment capital;
- (b) targeted investment opportunities;
- (c) investment portfolio;
- (d) expected return on capital or investments established;
- (e) specific investment projects and their respective project appraisals including rate of return on investment or capital employed;
- (f) estimated cost of each investment to be made;
- (g) any other matter as the Executive Committee Member may prescribe.

(2) The Council shall not undertake any investment unless it is in accordance with the investment strategy and plan prepared under sub section (1).

(3) The Council may, each year, review the investment strategy and plan to align it with the prevailing market and investment trends.

(4) The Council shall prepare annual plans for implementing the investment plan and strategy.

Appraisal and financial.

26. The Council shall not undertake any investment or analysis 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 Council shall establish and maintain measures to ensure that its—

- (a) financial and liquidity ratio maintained;
- (b) operations and investments are sustainable and profitable;
- (c) investment ventures are competitive and economical for the benefit of the County.

(2) The Unit 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 Committee Member may, at any time, require the Council to undertake an assessment relating to any investment venture where he or she is of the opinion that the venture does not meet the required threshold for sustainability, profitability or competitiveness.

(4) The Executive Committee Member may, in consultation with the Council, 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 Council may—

- (a) restructure the investment;
- (b) merge the investment with another investment; or
- (d) sell, dispose of, transfer or liquidate the investment where the investment was being carried out by a company established by the Council as a sole business.

28. The Council may enter into partnership or collaboration with any entity for the purposes of carrying out the objects of this Act.

Investment certificate.

29. (1) A local and foreign investor who intends to invest in the County may apply to the Council for an investment certificate.

(2) The Council shall prescribe the form of application and conditions for an investment certificate.

investment Certificates.

30. (1) The Council shall specify the incentives that licenses relating to an Investment certificate holder may be entitled to.

(2) An investment certificate shall set out the licenses that the holder requires to carry out the proposed investment in the County and the certificate holder shall be issued with such license on application and payment of the prescribed fee.

PART V— GENERAL PROVISIONS

Regulations.

31. (1) The Executive Committee Member may, in consultation with the Council, make regulations generally for the better carrying out of the objects and provisions 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; and
- (b) prescribe matters related to investment plan and strategy.

SCHEDULE (S 11)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. Meetings of the Council

(1) The Council shall meet at least four times in every financial year and not more than four months shall elapse between one meeting and the next meeting of the Council.

(2) The Chairperson shall convene all meetings of the Council upon requisition in writing by at least seven members and shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Council 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 Council 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 Council shall be invalid by reason only of a vacancy among the members thereof.

2. Conflict of Interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council 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 Council 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 Council 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 Council.

(3) Where the Council becomes aware that a member has a conflict of interest in relation to any matter before the Council, the Council 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 Governor in writing.

(5) Upon the Council 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 Council and the member with the conflict of interest shall not vote on this determination.

(6) Where the Council 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 Council within thirty days.

(7) The Council shall report to the Executive Committee any determination by the Council 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 Council.

(8) The annual report of the Council 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 Council 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.

3. Minutes of Meetings

The Council shall cause minutes of all resolutions and proceedings of meetings of the Council to be entered in books kept for that purpose—

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council 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 Council 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.

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MEMORANDUM OF OBJECTS AND REASONS

This Bill is to provide for the establishment framework for promotion and co-ordination of investment and social development and related purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill and the interpretation of words and expressions used in the Bill and the objects of the Bill and performance guiding principles.

Part II of the Bill provides for the establishment, composition, and term of office, removal, remunerations and functions of the Council. Sections 14 – 17 of the Bill provides for the establishment and operational guideline of the Investment Unit.

Part III of the Bill provides for finances and expenditure of the Council.

Part IV of the Bill provides for investment management, section 24 – 30 provides for investments powers, planning, finance, profitability, and partnership and investment certificates.

Part V of the Bill provides for general provision and the conduct of business and affairs of the council.

Dated this 4th Day of January 2016.

MCA AZHAR ALI MBARAK

Chair – Trade, Tourism, Information and Co-operatives