



REPUBLIC OF KENYA

OCTOBER 2023

DRAFT BILL

**THE INVESTMENT PROMOTION AND FACILITATION BILL, 2023**

*A Legislative Proposal by*

*The Cabinet Secretary, Ministry of Trade, Investment and Industry*

**THE INVESTMENT PROMOTION AND FACILITATION BILL, 2023**

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*Clause*

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**INVESTMENT PROMOTION AND FACILITATION BILL, 2023**

**A Bill for**

**AN ACT** of Parliament to promote, facilitate and coordinate investment and for connected purposes.

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

- Short title                    **1.** This Act may be cited as the Investment Promotion and Facilitation Act, 2023.
- Interpretation.              **2.** In this Act, unless the context otherwise requires—
- “aftercare services”** means support services offered to registered operational local and foreign investors to facilitate successful start-up and growth of investments;
- “Board”** means the Board of the Corporation established under section 8;
- “Cabinet Secretary”** means the Cabinet Secretary for the time being responsible for matters relating to investment;
- “Corporation”** means the Kenya Investment Corporation established under section 5;
- “Council”** means the National Investment Council established under section 19;
- “foreign direct investment”** means substantial and lasting investments made by a foreign company or government into an investment in Kenya;
- “foreign investor”** means—
- (a) a natural person who is not a citizen of a partner state of the East Africa Community;
  - (b) a partnership in which the controlling interest is owned by a person or persons who are not citizens of a partner state of the East Africa Community; and
  - (c) a company or other body corporate incorporated under the laws of a country other

than Kenya or a partner state of the East Africa Community;

**“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, reinvestment, divesture or rehabilitation of a business enterprise;

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

**“investment enterprise”** means an enterprise using tangible or intangible assets for profit-making purposes in accordance with the provisions of this Act;

**“investor facilitation”** means services offered to local and foreign investors to set up businesses, operationalize or expand existing investments;

**“investment facilitation”** means creating a transparent, efficient, conducive business environment to set up businesses, operationalize or expand existing investments”

**“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 or East Africa partner state;
- (b) a partnership in which the partnership controlling interest is owned by a person who is a citizen of Kenya or East Africa partner state;
- (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 East Africa partner state; 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 or East Africa partner state.

“**Tribunal**” means the Investment Trade and Industry Tribunal established under section 39;

Object of the Act      **3.** The object of the Act is to promote, coordinate and facilitate investment opportunities for local and foreign investors.

Application            **4.** (1) This Act shall apply to local and foreign investors.

(2) This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on matters relating to promotion and facilitation of local and foreign investments in Kenya.

## **PART II—ADMINISTRATION**

Establishment of the Corporation.      **5.** (1) There is established the Kenya Investment Corporation which shall be a successor of the Kenya Investment Authority established under section 14 of the Investment Promotion Act, 2004.

No. 6 of 2004

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

(a) suing and being sued;

(a) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(b) entering into contracts;

(c) generating, investing, borrowing and lending money; and

(d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, this may lawfully be done or performed by a body corporate.

Headquarters

**6.** (1) The headquarters of the Corporation shall be in the Capital City of the Republic of Kenya, but the Corporation may establish offices in other places in Kenya.

(2) The Corporation shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

Functions of the Corporation

**7.** The Corporation shall—

- (a) identify investment opportunities at national and county levels for local and foreign investors;
- (b) undertake investor targeting locally and internationally;
- (c) develop investment project profiles in line with the country's economic development agenda;
- (d) promote investment opportunities to existing and potential investors;
- (e) advise investors on procedures and processes for setting up investment;
- (f) register foreign investors;
- (g) collate data on local investors;
- (h) facilitate investors to obtain necessary licenses, permits, incentives, exemptions as provided under any other legislation;
- (i) issue investment certificate to local and foreign investors;
- (j) implement programs and activities that improve the ease of doing business in Kenya;
- (k) provide aftercare services to registered local and foreign investors;
- (l) coordinate investments by—
  - (i) formulating and implementing plans, programs and actions for effective investment promotion at both national level and county level;

- (ii) ensuring regular review of the investment environment, consulting and collaborating with State and non-State organs, departments or agencies in the formulation of policies and legislation and forwarding their recommendations to the Government for the improvement of the investment climate;
- (iii) liaising with relevant government agencies, departments and private sector in the promotion, facilitation and implementation of sectoral investment initiatives; and
- (iv) undertake monitoring and evaluation on investment projects for compliance and impact; and
- (m) perform any other functions that may be assigned by the Cabinet Secretary, or as may be prescribed by any other written law.

Board of the Corporation

**8.** (1) The management of the Corporation shall vest in a Board which shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the principal secretary responsible for matters relating to investment or a representative appointed in writing;
- (c) the principal secretary for National Treasury or a representative appointed in writing;
- (d) the Attorney General or a representative appointed in writing;
- (e) a County Chief Officer responsible for matters relating to investment, appointed by the Chairperson of the Council of Governors;
- (f) four members representing the private sector, appointed by the Cabinet Secretary; and
- (g) the Chief Executive Officer, who shall be an *ex officio* member;



(2) A person is qualify for appointment as the Chairperson or a member of the Board under subsection (1)(g) if the person—

- (a) holds an undergraduate degree in a relevant field from a university recognized in Kenya;
- (b) has proven business management or other relevant professional experience;
- (c) has served in a position of senior management for a period of at least six years; and
- (d) has not served in the Corporation as an employee in the preceding five years;
- (e) meets the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or as a member if the person—

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to at least six months imprisonment;
- (d) has been removed from any public office for contravening the provisions of the Constitution or any other written law; or
- (e) is a member of Parliament or County Assembly

(4) In appointing the members under subsection (1) (g), the Cabinet Secretary shall be guided by the national values and principles of governance under Article 10 and 232 of the Constitution.

(5) The appointment under subsection 1(a) and (g) shall be based on merit, industry experience, special knowledge, profession or skill which shall be of benefit to the Corporation.

(6) A member of the Board appointed under subsection (1) (a) and (g) shall hold office for a term of three years and shall, based on satisfactory performance, be eligible for reappointment for one further term.

(7) The appointment of the chairperson and members of the Board appointed under subsection (1) (g) shall be by notice in the *Gazette*.

(8) A member of the Board shall be paid such allowances as may be determined by the Salaries and Remuneration Commission .

(9) The members of the Board shall be appointed in a manner to ensure at different dates so that the respective expiry dates of their terms of office shall fall on different dates.

Vacation of office

**9.** (1) A member of the Board shall cease to hold office—

- (a) upon the expiry of their term of appointment;
- (b) upon resignation;
- (c) if absent without the permission of the Chairperson from three consecutive meetings of the Board;
- (d) if convicted of an offence and sentenced to imprisonment for a term exceeding six months;
- (e) if adjudged bankrupt; and
- (f) if is incapacitated by prolonged physical or mental illness and incapable of discharging their duties.

(2) Where a vacancy occurs in the membership of the Board under subsection (1), the appointing authority shall appoint a new member in accordance with the provisions of this Act.

Functions of the Board

**10.** The Board shall—

- (a) approve and oversee the implementation of projects, programs, strategies and policies of the Corporation;
- (b) ensure that the Corporation complies with all the relevant laws, regulations, governance practices, accounting procedures and auditing standards;
- (c) consider and approve the budget of the Corporation;
- (d) monitor performance and ensure effective and efficient utilization of the resources of the Corporation;
- (e) approve the appointment criteria and the terms and conditions of service for staff;
- (f) carry out any other function for purposes of promoting and facilitating the objects of the Corporation.

Powers of the Board

**11.** (1) The Board shall have all powers necessary for the proper performance of the functions of the Corporation under this Act, in particular, the Board shall have powers to—

- (a) acquire, manage, control administer or dispose assets of the Corporation in a manner and for the purposes which shall promote the interests of the Corporation;
- (a) establish a subsidiary company, a joint venture or any other special purpose vehicle for purposes of discharging the mandate of the Corporation;
- (b) allocate resources for capital and recurrent expenditure and for the reserves of the Corporation;
- (c) receive, on behalf of the Corporation, fees, grants, gifts, donations, or other moneys endowments and make legitimate disbursements therefrom in accordance with the law;

- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established;
- (e) open such bank accounts for the funds of the Corporation as may be necessary;
- (f) charge fees and levies; and
- (g) invest any of the funds of the Corporation not immediately required for its purposes;

Conduct of  
business for the  
Board.

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**12.** (1) The business and affairs of the Board shall be conducted in accordance with section 8 of the State Corporation Act.

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

Delegation of  
functions and  
powers.

**13.** (1) The Board may, in writing, delegate the exercise of any of the powers or the performance of any of the functions of the Board under this Act other than its powers to borrow money to any person or committee of the Board.

(2) Any function or power delegated under this section shall be performed and exercised in the name and on behalf of the Corporation.

Committees of the  
Board

**14.** (1) The Board may, for effective discharge of its functions establish committees.

(2) The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

(3) The Board may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Corporation.

(4) Subject to any specific or general direction of the Board, any committee established under subsection (1) may regulate its own procedure.

(5) Any person co-opted into a Committee under subsection (3) may attend the meetings of the Committee and participate in its deliberations, but shall not vote at such meeting.

Chief Executive  
Officer

**15.** (1) The Board shall through a competitive recruitment and selection process appoint a suitably qualified person to be the Chief Executive Officer.

(2) A person is qualified to be appointed as the Chief Executive Officer, if that person—

- (a) holds a postgraduate degree from a university recognized in Kenya in leadership, management, trade, investment, industry, finance, law, social sciences or any other relevant field;
- (b) has at least ten years working experience, five of which must be at a senior managerial level; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be responsible to the Board for—

- (a) the day-to-day management of the Corporation;
- (b) implementation of the decisions of the Board;
- (c) managing the funds, property and affairs of the Corporation;
- (d) the supervision of the staff of the Corporation;
- (e) preparation of strategies, policies and programs, for the consideration of the Board;
- (f) the execution of the strategies, programs and policies, of the Corporation;

- (g) implementation of the objectives, strategies, policy directions, organization, administration of the Corporation; and
- (h) performing any other function incidental to the functions of the Corporation as may be assigned by the Board.

(4) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for reappointment for one further term subject to satisfactory performance.

(5) The Board may terminate the appointment of the Chief Executive Officer in accordance with the 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;
- (c) negligence of duty; or
- (d) any other ground that may justify the removal from office under the terms and conditions of service.

Corporation  
secretary

**16.** (1) The Board shall, through an open and transparent process appoint a suitably qualified person to be the Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) is a certified secretary and is a member of the Institute of Certified Public Secretaries of Kenya in good standing; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall—

- (a) be the secretary to the Board;
- (b) in consultation with the chairperson of the Board and the Chief Executive Officer, issue notices for meetings of the Board;
- (c) record and keep minutes and other records of the Board;
- (d) keep, in custody, the records of the deliberations, decisions and resolutions of the Board;
- (e) transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation and other relevant action;
- (f) provide guidance to the Board on their duties and responsibilities on matters relating to governance; and
- (g) perform such other duty as the Board may direct.

(4) In the performance of his or her duties under this Act, the Corporation Secretary shall be responsible to the Chief Executive Officer.

(5) The Board may in the absence of the Corporation Secretary appoint any qualified member staff of the Corporation to temporarily perform the functions of the Secretary.

(6) Any functions delegated under subsection (5) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

Staff of the Corporation

**17. (1)** The staff of the Corporation shall comprise of—

- (a) such professional, technical and administrative officers and support staff, as may be appointed by the Corporation in the discharge of its functions under this Act; and

(b) such public officers as may be seconded to the Corporation.

(2) The Corporation shall, in the appointment of employees, ensure—

(a) equalization of opportunity for persons with disabilities;

(a) equalization of opportunities for the youth;

(b) that not more than two thirds of its staff are of the same gender; and

(c) that the appointment reflects ethnic and regional diversity of the people of Kenya

(3) The Board shall, on the advice of the Salaries and Remuneration Commission, determine the salaries of the staff of the Corporation.

Seal and  
execution of  
documents

**18.** (1) The common seal of the Corporation shall be kept in the custody of the Corporation Secretary.

(2) The common seal shall not be affixed to any instrument or document except as may be authorized by the Corporation.

(3) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer or an officer of the Corporation authorized in writing by the Board.

(4) A document that is not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, Chief Executive Officer or any other person authorized in writing by the Board for that purpose.

(5) Despite subsection (3), in the event that the Chief Executive Officer is absent from a particular matter, the Board shall nominate one member of the Board to authenticate the seal on behalf of the Chief Executive Officer.



National  
Investment  
Council

**19.** (1) There is established the National Investment Council which is an unincorporated body.

(2) The Council shall consist of—

- (a) the President of the Republic of Kenya, who shall be the Chairperson;
- (b) Cabinet Secretary responsible for matters relating to investment;
- (c) Cabinet Secretary responsible for National Treasury and Economic Planning;
- (d) Cabinet Secretary responsible for matters relating to foreign affairs;
- (e) Cabinet Secretary responsible for Lands;
- (f) the Attorney General;
- (g) Chairperson of the Council of Governors;
- (h) the Governor, for the time being serving as the chairperson of the Council of Governor's Committee responsible for investment;
- (i) the Governor of the Central Bank of Kenya;
- (j) Chairperson of the Board of the Corporation, who shall be the secretary;
- (k) seven experts appointed by the President to represent the private sector, each of whom has distinguished himself or herself in the field of law, economics, commerce, investment, industry or management.

(3) The members appointed under paragraph (2) (k) shall serve for a period of three years, renewable for one further term.

(4) In appointing the members under paragraph (2) (k), the President shall be guided by the national values and principles of governance under Article 10 and 232 of the Constitution.

(5) A member of the Council under paragraph (2) (k) shall cease to hold office—

- (a) upon the expiry of their term of appointment;
- (b) upon resignation;
- (c) if absent without the permission of the Chairperson from three consecutive meetings of the Council;
- (d) if convicted of an offence and sentenced to imprisonment for a term exceeding six months;
- (e) if adjudged bankrupt; and
- (f) if is incapacitated by prolonged physical or mental illness and incapable of discharging their duties.

(6) The Council may co-opt other members on need basis from time to time.

(7) The Council may, for effective discharge of its functions establish committees.

(8) The Corporation shall serve as the Secretariat of the Council.

(9) Subject to the provisions of this Act, the Council shall regulate its own procedure.

(10) The functions of Council are—

- (a) to advise the Government and government agencies on ways to increase investment and economic growth in Kenya; and
- (b) to promote co-operation between the public and private sectors in the formulation and implementation of government policies relating to the economy and investment.

(11) In carrying out its functions under subsection (1) the Council shall—

- (a) monitor the economic environment to identify impediments to investment and economic growth and to propose incentives to promote investment and economic growth;
- (b) monitor economic development in Kenya to identify areas that may not be benefiting from economic development; and
- (c) consult with persons from both the public and private sectors to obtain views and suggestions for promoting investment and economic development.

### PART III—INVESTMENT FACILITATION

Registration of foreign investors      **20.** (1) A foreign investor who invests in foreign direct investment in Kenya shall register with the Corporation before engaging in any investment.

(2) The Corporation may appoint agents to facilitate registration of foreign investors.

(3) The Cabinet Secretary may prescribe regulations for registration requirements.

Application for investment certificate      **21.** (1) A local investor may apply to the Corporation for an investment certificate.

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

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

(4) The Corporation may request clarifications and additional information for purposes of registration.

(5) An application, under this section, shall be accompanied by a non-refundable application fee as may be determined by the Board through a *gazette* notice.

Investment certificate      **22.** (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 five 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 five 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 Corporation 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 Corporation considers beneficial to Kenya.

Procedures for consideration of application      **23.** The procedures set out in the Schedule shall apply with respect to the consideration of an application for an investment certificate.

Issue of certificate      **24.** (1) If the Corporation decides to issue an investment certificate it shall issue the certificate on the date the applicant requests.

(2) The Corporation may issue an investment certificate in the name of a corporation established by the applicant for the purposes of the investment or in the name of any other business organization to be used for the purposes of the investment.

(3) A local investor who does not hold an investment certificate shall register the investment with the Corporation.

Conditions of certificate      **25.** An investment certificate shall be subject to—

- (a) such conditions as are prescribed in the regulations; and
- (b) such conditions as the Corporation may specify at the time the certificate is issued.

Transfer of an investment certificate      **26.** (1) A person shall not transfer an investment certificate without the written approval of the Corporation .

(2) The Cabinet Secretary may prescribe regulation to provide for restrictions of transfer of investment certificate.

Amendment of an investment certificate      **27.** At the request of the holder of the certificate, the Corporation may amend an investment certificate subject to any restrictions prescribed in the regulations.

Revocation of an investment certificate      **28.** (1) The Corporation may revoke an investment certificate on the following grounds—

(a) that the certificate was issued on the basis of incorrect information given by the applicant for the certificate;

(b) that the investment certificate was obtained by fraud; or

(c) that a condition of the investment certificate was breached.

(2) If the Corporation proposes to revoke an investment certificate, the Corporation shall give the holder of the investment certificate at least thirty days written notice of the grounds for the proposed revocation and shall give the holder an opportunity to make representations as to why the investment certificate should not be revoked.

Entitlement to certain licences

**29.** (1) An investment certificate shall set out the licences that are necessary to the proposed investment and to which the holder of the investment certificate may, on application, be legally entitled.

(2) Upon the issue of an investment certificate, the following apply with respect to each licence set out in the certificate under subsection (1)—

- (a) the holder of the investment certificate is entitled to have the licence issued, subject to any conditions set out in the investment certificate, upon application made within twelve months after the investment certificate is issued and upon payment of the applicable fee, if any; and
- (b) until the licence is issued or twelve months elapse after the investment certificate is issued, whichever occurs first, the licence shall be deemed to have been issued, subject to any conditions set out in the investment certificate and subject to the requirement to pay fees under subsection (3).

(3) The holder of an investment certificate shall pay any fees that may be payable under the relevant legislation for the licences set out in the investment certificate in respect of the time period commencing on the day the investment certificate is issued and such fees shall be paid within six months after the issue of the investment certificate.

(4) The entitlement to licences under subsection (2)(a) is for the initial issue of such licences only and following that initial issue the laws under which the licences are issued apply in the same way as they apply to all licences, including, for greater certainty, with respect to the revocation or renewal of the licences.

(5) The Corporation shall facilitate the issue of licences to which the holder of an investment certificate is entitled under this section.

(6) This section shall not apply to issuance of licences or permits relating to—

- (a) an environmental, health or security nature; or
- (b) an issue in relation to which the approval or consent of another person or body is required.

(7) Where it determines that the licence relates to subsection (6), the Corporation shall refer the holder of an investment certificate to the appropriate person or body and shall inform the applicant of that referral.

(8) For the purposes of applying any time periods specified in the Schedule, the time between a referral under subsection (7) and the response back from the person or body to which the referral was made, shall not be counted.

Entitlement to entry permits for expatriates

No. 12 of 2011

**30.** (1) The holder of an investment certificate is entitled to the following entry permits under the Kenya Citizenship and Immigration Act, 2011—

- (i) three class D entry permits for management or technical staff; and
- (ii) three class G entry permits for owners, shareholders or partners.

(2) The initial issue of a permit under this section shall be for a two year period.

(3) The holder of the investment certificate is entitled to have a permit under this section reissued upon its expiry or issued to a different employee, owner, shareholder or partner.

(4) The holder of the investment certificate is not entitled to have a permit issued to a person who is a prohibited immigrant within the meaning of the Kenya Citizenship and Immigration Act, 2011.

No. 12 of 2011

(5) A permit under this section is subject to a conditions that the holder of the permit complies with the laws of Kenya.

(6) For each permit under subsection (1) the holder of the investment certificate is entitled to the issue of—

- (a) a dependent's pass for each dependent of the person to whom the permit is issued; and
- (b) such re-entry permits as are required in connection with the permit or with the passes under paragraph (a).

(7) Subsections (4) and (5) apply, with necessary modifications, with respect to passes or re-entry permits under subsection (6).

(8) An entitlement to a permit or pass under this section is conditional upon—

- (a) application being made for the permit or pass;
- (b) the applicable fee, if any, being paid; and
- (c) any security deposit or bond required under the Kenya Citizenship and Immigration Act, 2011 being paid or provided.

No. 12 of 2011

(9) Notwithstanding subsection (8)(b), no fee is payable for the initial issue of a permit under subsection (1)(b).

(10) If an entry permit described in subsection (1)(a) has already been issued to an employee of the holder of the investment certificate as of the time the investment certificate was issued, that permit shall be deemed to be one of the permits to which the holder of the certificate is entitled under subsection (1)(a).

(11) If an entry permit described in subsection (1)(b) has already been issued to the holder of the investment certificate or an owner, shareholder or partner of the holder as of the time the investment certificate was issued, that permit shall be deemed to be one of the permits to which the holder of the certificate is entitled under subsection (1)(b).



(12) The Corporation shall facilitate the issue of permits and passes that the holder of the investment certificate is entitled to have issued under this section.

(13) For greater certainty, nothing in this section limits the issue, under the Act, of other permits or passes in addition to those which the holder of an investment certificate is entitled to have issued under this section.

Maintenance of Register

**31.** The Corporation shall maintain a register of—

- (a) all investments registered by the Corporation;
- (b) all applications for investment certificates;
- (c) all issued investment certificates for new, expanded, restructured, rehabilitated or improved business enterprises;
- (d) all amendments or revocations of investment certificate; and
- (e) such other particulars relating to the investment certificate as may be necessary or desirable to be recorded.

Provision of government services at a centralized facility

**32.** (1) In promoting and facilitating investment in Kenya, the Corporation may establish and operationalize a centralized facility for purposes of providing government services and regulatory requirements for investors.

(2) The facility may host government regulatory and service provision agencies including, agencies responsible for—

- (a) registration of business;
- (b) tax and customs administration requirements
- (c) registration and payment of taxes;
- (d) immigration;
- (e) issuing of permits, licences and approvals;
- (f) labour compliance obligations

- (g) environmental conservation and management;
- (h) land administration;
- (i) development control and enforcement
- (j) business licensing services including the relevant county government;
- (k) generation and transmission of electricity;
- (l) overseeing the construction industry;
- (m) promotion and facilitation of exports in Kenya;
- (n) for Special Economic Zones;
- (o) any other service that the Board may consider necessary.

(3) The agencies stationed at the centralized facility shall provide services to investors in accordance with their respective functions and mandates.

### **PART III—FINANCIAL PROVISIONS**

Funds of the Corporation

**33.** (1) The funds of the Corporation shall include—

- (a) such monies as may accrue or vest in the Corporation in the course of the exercise of its powers or the performance of its functions under this Act or any other written law;
- (b) such other funds as may lawfully accrue to the Corporation;
- (c) such sums as may be appropriated by Parliament for the purposes of the Corporation; and
- (d) gifts, grants or donations made to the Corporation.

(2) The Board shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attached to the donation.

Financial year           **34.** The financial year for the Corporation shall be a period of twelve months ending on the thirtieth June in each year.

Annual estimates       **35.** (1) The Board shall cause to be prepared estimates of the income and expenditure of the Corporation for that year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Corporation for the financial year concerned, and in particular shall provide for estimated revenue and expenditure of the Corporation for the relevant financial year.

Accounts and audit     **36.** (1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Corporation.

(2) The accounts of the Corporation shall be audited and reported upon in accordance with the Public Audit Act, 2015 and the Public Finance Management Act, 2012.

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Investment of surplus funds.   **37.** The Board may invest any of the monies of the Corporation which are not immediately required for its purposes in such manner as the National Treasury may, from time to time, direct.

## **PART V— INVESTMENT, TRADE AND INDUSTRY TRIBUNAL**

Application for review   **38.** (1) A person, who applies for an investment certificate or who is or was a holder of an investment certificate and is aggrieved by the decision of the Corporation, may within thirty days of the decision lodge an application for review of the decision or omission.

(2) The application referred to under subsection (1) shall be lodged with the Chief Executive officer in writing stating the grounds upon which it is lodged.

(3) The Chief Executive Officer shall within a period not exceeding thirty days of receipt of the application under subsection (2), determine the review and communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

(4) Where the person is aggrieved by the decision of the Chief Executive officer in subsection (3), the person may refer the matter to the Tribunal.

(5) A person intending to lodge an appeal under this section shall lodge the appeal within thirty days after being served with the decision and shall serve a copy of the appeal on Chief Executive Secretary.

Establishment of  
the Tribunal

**39.** (1) There is established the Investment, Trade and Industry Tribunal comprising of—

- (a) a chairperson, who shall be a person qualified to be appointed as a judge of the High Court of Kenya, appointed by the Chief Justice;
- (b) an advocate of the High Court of Kenya, with professional qualifications in trade, investment and industry law nominated by the Law Society of Kenya; and
- (c) three persons, who are not public servants, with demonstrated competence in trade, investment and industry affairs.
- (d) a secretary to the Tribunal, who shall be an *ex officio* member.

(2) The Judicial Service Commission shall appoint the members and the secretary of the Tribunal.

(3) The chairperson and the member of the Tribunal shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(4) The office of a member of the Tribunal shall become vacant—

- (ii) at the expiration of three years from the date of his appointment;
- (iii) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for

appointment to the office of a member of the Tribunal;

- (iv) if he resigns the office of member of the Tribunal.

(5) There shall be paid to the Chairperson and the members of the Tribunal such remuneration and allowances as the Chief Justice on the recommendation of the Salaries and Remuneration Commission shall determine.

(6) The Chairperson and the members of the Tribunal shall serve on such terms and conditions as determined by the Judicial Service Commission.

Jurisdiction of the Tribunal

**40.** The Tribunal shall have jurisdiction to hear and determine matters relating to trade, investment and industry, including—

- (a) the grant of a licence, investment certificate or certificate of registration or a refusal to grant a licence or certificate of registration or the transfer of a licence or permit, under this Act or its regulations;
- (b) the imposition of any condition, limitation or restriction on the persons registration or licence under this Act or its regulations; and
- (c) the revocation, suspension or modification of the person's registration or licence under this Act or its regulations.

Powers of the Tribunal

**41.** The Tribunal may—

- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths; or

- (c) on its own motion summon and hear any person as witness.

Appointment of assessors

**42.** (1) The Chairperson of the Tribunal may appoint any persons with special skills or knowledge on trade, investment and industry matters which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Awards of the Tribunal

**43.** Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which may have been exercised by the Corporation in the proceedings in connection with which the appeal is brought;
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
- (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined; or
- (e) if satisfied upon application by any party, review any orders made under paragraph (a).

Appeals to the High Court

**44.** (1) Any person aggrieved by a decision or order of the Tribunal may, within fourteen days of such decision or order, appeal against such decision or order to the High Court, whose decision shall be final.

(2) Notwithstanding the provisions of subsection (1), where the Chief Executive Officer is satisfied that immediate action must be taken to avert serious injuries, the Chief Executive Officer shall have the power to take such reasonable action to stop, alleviate or reduce such injury, including the powers to close down any undertaking, until the appeal is finalized or the time for appeal has expired.

Staff of the Tribunal

**45.** (1) The Judicial Service Commission may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

(2) The staff of the Tribunal shall be paid such remuneration and allowances as the Chief Justice on the recommendation of the Salaries and Remuneration Commission shall determine.

Rules

**46.** The Chief Justice may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of all appeals;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and places where and the time at which the sittings shall be held;
- (d) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

**PART VI—PROVISIONS RELATING TO STATUTORY INSTRUMENT**

Statutory instruments.

**47.** (1) The Cabinet Secretary may make statutory instruments generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act.

(2) Without prejudice to the generality of the foregoing, statutory instrument made under this section may provide for—

- (a) activities reserved for local investors and locally owned investment enterprises;
- (b) the licences that an applicant of an investment certificate is entitled to as contemplated under section 29;

- (c) prescribing procedures for the vetting of investors; and
- (d) procedure for cancellation or revocation of an investment certificate.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(4) The principles and standards applicable to the delegated power referred to under this Act are those found in—

No. 23 of 2013

(a) the Statutory Instruments Act, 2013;

Cap 2

(b) the Interpretation and General Provisions Act;

(c) the general rules of international law as specified under Article 2(5) of the Constitution; and

(d) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

## **PART V—MISCELLANEOUS PROVISIONS**

Offences  
penalties

and

**48.** (1) A person who—

- (a) knowingly submits false or misleading information to the Corporation for the purposes of obtaining an investment certificate or obtaining any assistance from the Corporation;
- (b) refuses without lawful excuse to admit an officer or a designated agent into the premises of that



investment or otherwise obstructs an officer or a designated agent of the Corporation in the performance of the functions of the officer or the designated agent;

- (c) refuses or neglects to give any information which the Corporation reasonably requires for the purpose of this Act;

Commits an offence and is liable upon conviction to a fine not exceeding five million shillings or to imprisonment not exceeding five years, or to both.

(2) A person who—

- (a) is required to register under this Act, fails to register;
- (b) engages in an activity other than an activity for which he or she investor is registered under this Act;
- (c) applies any benefit conferred by or under this Act for purposes other than the purpose for which the benefit was conferred;

Commits an offence and is liable upon conviction to a fine not exceeding ten million shillings or to imprisonment not exceeding five years, or to both.

(3) The Corporation may, in addition to the penalty under subsection (1) and (2), in consultation with the relevant agencies—

- (a) in respect of each day that the offence continues, fine the offender a sum of Kenya shillings one hundred thousand;
- (b) suspend the registration of an investment;
- (c) cancel the registration of an investment;
- (d) order the payment or part-payment to the appropriate agency of fees, taxes, duties and other charges in respect of which benefits were granted to the enterprise;

- (e) revoke some or all of the incentives granted to the investor; or
- (f) take any other action that the Board considers appropriate.

Transitional and saving

**49.** (1) In this section, “Authority” means the Kenya Investment Authority established under section 14 of Investment Promotion Act, 2004

(2) On the Commencement date of this Act—

- (a) a member of the Board of the Authority in office shall continue to be a member of the Board of the Corporation as though appointed under this Act and shall serve the remainder of their term;
- (b) the Managing Director of the Authority in office shall continue to serve as the Chief Executive Officer of the Corporation as though appointed in accordance with this Act and shall serve the remainder of their term;
- (c) the staff of the Authority shall transition to be the staff of the Corporation on the same terms and conditions of service;
- (d) any certificate, permit or any approval given by the Authority in exercise of its functions shall be taken to have been issued by the Corporation under this Act;
- (e) all contracts, rights, duties, obligations, assets and liabilities of the Authority shall vest to the Corporation;
- (f) all actions, suits or legal proceedings pending by or against the Authority shall be carried on or prosecuted by or against the Corporation;
- (g) the pension scheme established by the former Authority shall be the pension scheme of the Corporation.

Repeal                      **50.** The Investment Promotion Act, 2004 is hereby  
No.6 of 2004              repealed.

**SCHEDULE**  
**PROCEDURES FOR CONSIDERATION OF**  
**APPLICATION FOR INVESTMENT CERTIFICATE**

[Section 24]

**1. Definition**

In this Schedule—

“working day” means a day other than a Saturday, Sunday or public holiday.

**2. Report on application**

(1) Within ten working days after a completed application is received, the Corporation shall prepare a written report on the application.

(2) An application shall be deemed to have been received when any clarifications or additional information required under section 3(3) are received.

**3. Decision**

Within five working days after the report on the application is prepared, the Corporation shall make its decision with respect to the application.

**4. Notice of decision**

- (a) Within five working days after the decision of the Corporation is made, the Corporation shall give the applicant a written notice of the decision.
- (b) If the Corporation decides to not to issue an investment certificate, the Corporation shall—
  - (c) prepare written reasons;
  - (d) include, with the notice to the applicant under paragraph (1), a copy of the reasons and a copy of the report prepared under paragraph (2); and
  - (e) give the Minister, within five working days after the decision of the Corporation is made, a copy of the application, a copy of the reasons and a copy of the report prepared under paragraph (2).

**5. Complaint to Corporation if decision is late**

- (1) If an applicant does not receive a notice of the Corporation's decision under paragraph (4) within twenty-five working days after the completed application was given to the Corporation, the applicant may make a written complaint to the Chief Executive Officer.
- (2) The Chief Executive Officer shall investigate a complaint made under subparagraph (1) and shall, within fifteen working days after the complaint was received, inform the applicant of the results of the investigation

## MEMORANDUM OF OBJECTS AND REASONS

### **Statement of the Objects and Reasons of the Bill**

The primary objective of this legislation is to establish a comprehensive legal framework aimed at fostering both local and foreign investments within Kenya. The Bill seeks to achieve this by aligning the existing Act with the Constitution of 2010, the Kenya Investment Policy of 2014, and adapting to changes in the domestic and international investment landscape. The overarching goal is to create a conducive legal environment that is more responsive to the needs of investors and supportive of the government's agenda.

**Part I (Clause 1—4)** of the Bill provides for the preliminary provisions including the short title of the Bill, interpretation of the terms used in Bill and the objects and application of the Bill.

**Part II ( Clause 5—19)** of the Bill contains the administrative provisions. It establishes the Kenya Investment Corporation which will be a successor of the Kenya Investment Authority and outlines its functions. It provides for the Board of the Authority, its functions, powers, qualifications of members and appointment of the Chief Executive officer, Corporation Secretary and the staff of the Authority. It further provides for the establishment of the National Investment Council, which is an unincorporated body. It provides for its composition and functions.

**Part III ( Clause 20—32)** of the Bill contains provisions on investment facilitation. It provides for registration of foreign investors, application for investment certificate, issuance of investment certificate and conditions of the investment certificate. It further provides for transfer, amendment and revocation of the investment certificate, entitlement to certain licences and entitlement to entry permits for expatriates. It also obliges the Corporation to maintain a register of investors and establish a one-stop center for provision of government services to investors.

**Part IV (Clause 33—37)** contains financial provisions including funds of the corporation, financial year, audits and accounts, investment and management of funds by the Board.

**Part V (Clause 38—46)** contains provisions on the Investment, Trade and Industry Tribunal. This part establishes the Tribunal. It provides for its composition, jurisdiction, powers, awards and appointment of assessors. It further provides for appeals from the Tribunal and empowers the Chief Justice to make rules on various aspects of the Tribunal.

**Part VI (Clause 47)** contains provisions relating to development of statutory instruments in compliance with the Statutory Instruments Act, 2013.

**Part VII (Clause 48—50)** contains miscellaneous provisions including offences and penalties, transitional provisions and the repeal of the Investment Promotion Act, 2004, Cap 485B.

The Schedule to the Bill details the procedures for consideration of application for investment certificate.

**Statement on delegation of legislative power and limitation of fundamental right and freedom**

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights and freedoms.

**Statement of how the Bill concern county governments**

The Bill concerns county government in terms of Article 109(4) as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the ....., ....., 2023

**KIMANI ICHUNG'WAH**  
*Leader of the Majority Party*