



REPUBLIC OF KENYA

MAY, 2024

DRAFT BILL

THE INVESTMENT PROMOTION AND FACILITATION BILL, 2024

A Legislative Proposal by

The Cabinet Secretary, Ministry of Investments, Trade and Industry

THE INVESTMENT PROMOTION AND FACILITATION BILL, 2024

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DRAFT

INVESTMENT PROMOTION AND FACILITATION BILL, 2024

A Bill for

AN ACT of Parliament to promote, coordinate and facilitate 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—

“Authority” means the Kenya Investment Authority established under section 5;

“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 Authority established under section 8;

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

“County” refers to County Government as provided for under section 176 of the Constitution of Kenya 2010;

“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 African 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 registration certificate” means an investment registration 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” means a natural person or entity with resources and decision-making authority to commit capital to a project or venture in a specific country with the expectation of generating a return on investments

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

“investment facilitation” means the act of streamlining and supporting the investment process for businesses that are looking to set up or operating in a country ”

“licence” includes registration, permit, approval or authorizations required by law;

“local investor” means—

- (a) a natural person who is a citizen of Kenya or East African Community partner state;
- (b) a partnership in which the partnership controlling interest is owned by a person who is a citizen of Kenya or East African Community 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 African Community partner state; or

- (d) a trust or trust Authority established under the Laws of Kenya, in which the majority of trustees and beneficiaries are citizens of Kenya or East African Community partner state;

“National Investment Council” means the Council established under section 19;

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, coordination and facilitation of local and foreign investments in Kenya.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE AUTHORITY

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

Cap 485B

(2) The Authority 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 Authority shall be in the Capital City of the Republic of Kenya, but the Authority may establish offices in other locations in Kenya.

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

Functions of the Authority

7. The Authority shall—

- (a) identify investment opportunities at national and county levels for local and foreign investors in liaison with County Governments;
- (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 local and foreign investors digitally or non-digitally;
- (g) collect and collate data on local and foreign investors in accordance with data protection legislation;
- (h) facilitate investors in collaboration with the Counties to obtain necessary licenses, permits, incentives, exemption as provided for under relevant legislation(s);
- (i) issue investment registration 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) undertake investment research;
- (m) generate annual investment report(s);
- (n) 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) undertaking monitoring and evaluation on investment projects for compliance and impact.
And
- (o) 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
Authority

8. (1) The management of the Authority 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 in writing 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 qualified for appointment as the Chairperson or a member of the Board under subsection (1) (f) 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;
- (d) has not served in the Authority as an employee in the preceding five years; and
- (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) (f), 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 (f) shall be based on merit, industry experience, special knowledge, profession or skill which shall be of benefit to the Authority.

(6) A member of the Board appointed under subsection (1) (a) and (f) 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) (f) 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 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;

(f) if is incapacitated by prolonged physical or mental illness and incapable of discharging their duties; or

(g) upon death

(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 Authority;
- (b) ensure that the Authority complies with all the relevant laws, regulations, governance practices, accounting procedures and auditing standards;
- (c) consider and approve the budget of the Authority;
- (d) monitor performance and ensure effective, efficient and sustainable utilization of the resources of the Authority;
- (e) approve the appointment criteria and the terms and conditions of service for staff;
- (f) ensure formulation and implementation of risk management strategy; and
- (g) carry out any other function for purposes of promoting and facilitating the objects of the Authority.

Powers of the Board

11. The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act, in particular, the Board shall have powers to—

- (a) acquire, manage, control administer or dispose assets of the Authority in a manner and for the purposes which shall promote the interests of the Authority;

- (a) establish a subsidiary company, a joint venture or any other special purpose vehicle for purposes of discharging the mandate of the Authority;
- (b) allocate resources for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive, on behalf of the Authority, 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 Authority is established;
- (e) open such bank accounts for the funds of the Authority as may be necessary;
- (f) charge fees and levies; and
- (g) invest any of the funds of the Authority not immediately required for its purposes.

Conduct of
business for the
Board.

Cap 446

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

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 Authority.

(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 fifteen 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 Authority;

(b) implementation of the decisions of the Board;

- (c) managing the funds, property and affairs of the Authority;
- (d) the supervision of the staff of the Authority;
- (e) preparation of strategies, policies and programs, for the consideration of the Board;
- (f) the execution of the strategies, programs and policies, of the Authority;
- (g) implementation of the objectives, strategies, policy directions, organization, administration of the Authority; and
- (h) performing any other function incidental to the functions of the Authority as may be assigned by the Board.

(4) The Chief Executive Officer shall hold office for a term of three 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; or
- (c) 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 of staff of the Authority 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
Authority

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

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

(2) The Authority 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 Authority.

Seal and
execution of
documents

18. (1) The common seal of the Authority 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 Chief Executive Officer.

(3) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chief Executive Officer or an officer of the Authority 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 the Corporation Secretary 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 Authority, 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) Subject to the provisions of this Act, the operational procedure of the Council shall be regulated by the Secretariat.

(9) The functions of the Council are—

- (a) to advise the Government on ways to increase investment and economic growth in Kenya; and

- (b) to promote co-operation between the public and private sector in the formulation and implementation of government policies relating to the economy and investment.

(10) 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.

(11) The Authority shall serve as the Secretariat of the Council.

(12) The Secretariat shall—

- (a) coordinate and administer the activities of the Council;
- (b) conduct policy analysis and research to support the Council's decision-making process;
- (c) coordinate stakeholder engagement with the Council on investment matters;
- (d) monitor implementation of policies and programs recommended by the Council; and
- (e) conduct capacity building for both public and private sector stakeholders.

PART III—INVESTMENT FACILITATION

Registration of investors

20. (1) A foreign investor who invests in Kenya shall register with the Authority before engaging in any investment.

(2) A local investor who invests at least ten million Kenya shillings in Kenya shall register with the Authority.

(3) The Authority may appoint agents to facilitate registration of investors.

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

Application for Investment registration

21. (1) An investor shall apply for registration in the prescribed form as provided for in the First Schedule.

(2) The Authority may request clarifications and additional information for purposes of registration.

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

Procedures for consideration of application

22. (1) The procedures set out in the Second Schedule shall apply with respect to the consideration of an application for registration of an investment.

(2) An application shall be deemed to have been received when any clarification or additional information required under section 21 (2) are received.

Investment registration certificate

23. (1) The Authority shall issue an investor with an investment registration certificate, in the name of the entity established by the applicant, if

(a) the application is complete and satisfies the applicable requirements under this Act;

(b) the amount invested by a foreign investor meets the sector or industry threshold as determined by the Board through a *gazette* notice ; and

(c) 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)(b), 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 modern compatible state of the art 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; and
- (i) any other factors that the Authority considers beneficial to Kenya.

Transfer of an investment registration certificate

24. An Investment registration certificate once issued shall not be transferable to another natural person or entity.

Amendment of an investment registration certificate

25. At the request of the holder of the certificate, the Authority may amend an investment registration certificate subject to any restrictions prescribed in the regulations.

Revocation of an investment registration certificate

26. (1) The Authority may revoke an investment registration 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 registration certificate was obtained by fraud; or
- (c) that a condition of the investment registration certificate was breached.

(2) If the Authority proposes to revoke an investment registration certificate, the Authority shall give the holder of the 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 registration certificate should not be revoked.

Maintenance of Register

27. The Authority shall maintain a register of—

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

Provision of government services at a centralized facility

28. (1) In promoting and facilitating investment in Kenya, the Authority 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) immigration work permits and visas;
- (d) labour compliance obligations
- (e) environmental conservation and management;
- (f) land administration;
- (g) development control and enforcement
- (h) business permit and licensing services including the relevant approvals by County Government;
- (i) generation, distribution and transmission of electricity;
- (j) overseeing the construction industry;
- (k) promotion and facilitation of exports in Kenya;
- (l) Licensing of Economic Zones; and
- (m) 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 IV—FINANCIAL PROVISIONS

Funds of the
Authority

29. (1) The funds of the Authority shall include—

- (a) such monies as may accrue or vest in the Authority 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 Authority;

(c) such sums as may be appropriated by Parliament for the purposes of the Authority; and

(d) gifts, grants or donations made to the Authority.

(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 **30.** The financial year for the Authority shall be a period of twelve months ending on the thirtieth June in each year.

Annual estimates **31.** (1) The Board shall cause to be prepared estimates of the income and expenditure of the Authority for that year.

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

Accounts and audit **32.** (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 Authority.

Cap 412A
Cap 412B (2) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2015 and the Public Finance Management Act, 2012.

Investment of surplus funds. **33.** The Board may invest any of the monies of the Authority which are not immediately required for its purposes in such manner as the National Treasury may, from time to time, direct.

PART VI—MISCELLANEOUS PROVISIONS

Statutory instruments. **34.** (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) prescribing procedures for the vetting of investors; and
- (c) procedure for cancellation or revocation of an investment registration 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—

Cap 2A

- (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.

Offences and penalties

35. (1) A person who—

- (a) knowingly submits false or misleading information to the Authority during registration process or obtaining any assistance from the Authority;

- (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 Authority in the performance of the functions of the officer or the designated agent; and
- (c) refuses or neglects to give any information which the Authority reasonably requires for the purpose of this Act;

Commits an offence and is liable upon conviction to a fine not exceeding three million Kenya shillings or to imprisonment not exceeding two 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 the investor is registered under this Act; and
- (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 five million Kenya shillings.

(3) The Authority 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; and
- (c) cancel the registration of an investment.

Transitional and saving

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

(2) On the Commencement date of this Act—

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

Repeal

Cap 485

37. The Investment Promotion Act, 2004 is hereby repealed.

FIRST SCHEDULE

s. 21(1)

APPLICATION FOR INVESTMENT REGISTRATION CERTIFICATE**A. DETAILS OF THE INVESTOR**

- (i) Name of Investor _____
- (ii) Postal address of the Investor _____
- Tel _____
- E-mail: _____
- (iii) Is the company
(a) New [] **continue to section B,C,D & E**
(b) Operating [] **continue with this section and C,D & E**
- (iv) Name of Company/business -----
- (v) Location of business
(a) Land registration Number (L.R. No.) -----
(b) GPS Coordinates
(c) Street/Road-----
(d) Town-----
(e) County-----
- (vi) Legal form of the business Entity (Limited Company, Partnership, Etc.)

- (vii) Country and date of Incorporation

B. PROPOSED LOCATION OF BUSINESS

(a) Town-----

(b) County-----

C. COMPANY SHAREHOLDERS

Name of Shareholder/Director	Nationality	Email Address	%shareholding

DRAFT

(i) Sector

(ii) Project Description (Products/Services)

D. EMPLOYMENT DETAILS (if new give the proposed levels)

KENYAN EMPLOYEES	NUMBER
Managerial	<hr/>
Skilled	<hr/>
Unskilled	<hr/>
Total	

EXPATRIATE EMPLOYEES	NUMBER
Management	_____
Skilled	_____
Total	

E. INVESTMENT AND FINANCING PROGRAMME

(i) CAPITAL COSTS (ESTIMATED)

FIXED COSTS	AMOUNT
Land,	
Plant and Machinery	
Working Capital	
Others	
TOTAL	

(ii) FINANCING PLAN

Type of Financing	Foreign	Local
Equity		
Debt		
TOTAL		

PART V: DECLARATION

I hereby certify that the foregoing particulars are correct and true to the best of my knowledge.

Name _____

Signature _____

Date _____

Stamp/Seal

PART VI: FOR OFFICAL USE

Approved

Not Approved:

Comments:.....

Name of officer.....Designation.....

Sign.....Date.....

NB: 1. If the application does not contain sufficient information required under the Act, the applicant may be requested to give further information concerning the investment or be notified of any defects in the application and may be required to provide the additional information.

2. Any person who fraudulently makes a false statement in the application form commits an offence under these Regulations.

DRAFT

FOR OFFICIAL USE ONLY

1. REF
NO.

2. DATE
RECEIVED

3. RECEIVING
OFFICER

4. DATE
PROCESSED

DRAFT

KENYA INVESTMENT AUTHORITY

UAP Old Mutual Tower, 15th Floor, Upper Hill Road. P.O. Box 55704 -
00200 City Square, Nairobi, Kenya Tel: +254 730-104-200/210, Email:

info@invest.go.ke | Website: www.invest.go.ke

Representative Offices: Eldoret|Kisumu|Mombasa

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SECOND SCHEDULE

s. 22

**PROCEDURES FOR CONSIDERATION OF
APPLICATION FOR INVESTMENT REGISTRATION**

1. Definition

In this Schedule—

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

2. Registration

The applicant shall submit:

- (1) application letter addressed to the CEO KenInvest requesting for investment registration
- (2) a company profile, business plan or a feasibility study
- (3) registration documents issued by Business Registration Services
- (4) proof of payment of registration fee

3. Report on application

- (1) Within ten working days after a completed application is received, the Authority 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 21(2) are received.

4. Decision

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

5. Notice of decision

- (a) Within five working days after the decision of the Authority is made, the Authority shall give the applicant a written notice of the decision.
- (b) If the Authority decides to not to issue an investment registration certificate, the Authority 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 Cabinet Secretary, within five working days after the decision of the Authority is made, a copy of the application, a copy of the reasons and a copy of the report prepared under paragraph (2).

6. Complaint to Authority if decision is late

- (1) If an applicant does not receive a notice of the Authority's decision under paragraph (4) within twenty-five working days after the completed application was given to the Authority, 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 Authority 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, Authority 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—30) 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. It also obliges the Authority to maintain a register of investors and establish a one-stop center for provision of government services to investors.

Part IV (Clause 31—35) contains financial provisions including funds of the Authority, financial year, audits and accounts, investment and management of funds by the Board.

Part VII (Clause 36—39) contains miscellaneous provisions including, power to make regulations, offences and penalties, transitional provisions and the repeal of the Investment Promotion Act, 2004, Cap 485B.

The Schedules to the Bill provides for the application form for investment registration certificate and 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,, 2024

KIMANI ICHUNG'WAH
Leader of the Majority Party