

THE MURANGA COUNTY INVESTMENT PROMOTION BILL, 2022

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THE MURANG'A COUNTY INVESTMENT PROMOTION BILL, 2022

AN ACT of the County Assembly of Murang'a to provide for the establishment of the Murang'a County Investment Unit for promotion and coordination of investment and for connected purposes

ENACTED by the County Assembly of Murang'a, as follows—

PART I—PRELIMINARY

1. Short title and commencement

This Act may be cited as the Murang'a County Investment Promotion Bill.

2. Interpretation

In this Act, unless the context otherwise requires—

"Authority" means the Kenya Investment Authority as established under section 14 of the Investment Promotion Act, 2004;

"Chief Officer" means a Chief Officer of the County Government of Murang'a in charge of trade and investment;

"County Investment Unit" means the Murang'a County Investment Unit as established under Part section 4;

"County Executive Committee" means the County Executive Committee of the County Government of Murang'a in charge of trade and investment;

"County Public Service Board" means the Murang'a County Public Service Board;

"Executive Committee Member" means the Executive Committee Member for the time being responsible for matters relating to Trade;

"foreign investor" means—

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

"Investment" means the contribution of local or foreign capital by an investor, for the purposes of putting up, acquiring, expansion, restructuring, improvement or rehabilitation of business enterprise or any other ventures;

"local investor" means—

- (a) a natural person who is a citizen of Kenya;
- (b) a partnership in which the partnership controlling interest is owned by a person who is a citizen of Kenya;

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- (c) a company incorporated under the laws of Kenya, in which the majority of the shares are held by a person who is a citizen of Kenya; or
- (d) a trust or trust Corporation established under the laws of Kenya, in which the majority trustees and beneficiaries are citizens of Kenya.

3. Purpose of the Act

The purpose of this Act is to establish a body to promote domestic direct and foreign direct investments in the county in order to—

- (a) establish an efficient and effective instrument for attraction and promotion of investments;
- (b) enhance investment competitiveness within the county;
- (c) facilitate development of domestic direct and foreign direct investment;
- (d) enhance the county revenue base;
- (f) facilitate the industrial and commercial sector;
- (g) enable investments entry through established agencies to minimize the administrative burden on investors; and
- (h) establish land banks and other factors of production which could be used for large projects.

PART II—THE MURANG'A COUNTY INVESTMENT PROMOTION UNIT

4. Establishment of the Unit

- (1) There is established the Murang'a County Investment Promotion Unit.
- (2) The Unit shall be under the Department responsible for matters relating to trade and investment.

5. Functions of the Unit

- (1) The functions of the unit shall be to —
 - (a) facilitate investment opportunities in the county including securing the community approval and by providing land and other relevant factors of production where required for investment purposes;
 - (b) formulate policies that will allow ease of doing business in the county including identifying and addressing barriers that hinder investment;
 - (c) participate in investment promotion activities beneficial to the county for specific investment projects in collaboration with the Authority;
 - (d) advise the county executive committee member on matters relating to investment in the county;

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- (e) identify and facilitate in consultation with the Authority projects within the county that are ready for investment;
- (f) facilitate community engagement and review of potential investment projects and obtain local endorsement for any county-based government incentives;
- (g) assist foreign and local investors and potential investors by assisting in obtaining incentives or exemptions under the different laws;
- (h) work closely with the Authority to provide effective investor aftercare and support the Authority in facilitating reinvestment and upgrading of current investments.
- (i) Carry out continuous research on challenges and potential areas of investments; and
- (j) conduct policy advocacy.

6. Board of the Unit

- (1) The Unit shall have a board with the responsibility for the overall direction and management of the Unit.
- (2) The board of the Unit shall consist of —
 - (a) a Chairperson who shall be appointed by the Governor;
 - (b) the chief officer responsible for finance;
 - (c) the chief officer responsible for trade and investment;
 - (d) three professionals appointed through a competitive process by the Murang'a County Public Service Board;
 - (e) the Chairperson of the Murang'a County Economic Council; and
 - (f) the Unit Director who shall be an ex-officio member.
- (3) For a person to be qualified for appointment as a chairperson or a member appointed under subsection 2 (d), he shall possess the following minimum qualifications —
 - (a) Holds a bachelors degree in economics, law, finance, accounting or any business related field from a recognized university;
 - (b) Has knowledge and experience of at least ten years in senior level management in the public or private sector;
 - (c) Meets the requirements of chapter six of the constitution;
- (4) The term of office for the Chairperson or a member appointed under section 6 (2) (d) shall be three years, which may be renewed for one further term.
- (5) Notwithstanding subsection (4), the members of the Board shall retire on rotation, in a manner that will ensure that not more than two thirds of the members retire at the same time.
- (6) Not more than two thirds of the members of the Board under (2) shall be of the same gender.

7. Functions of the Board

The functions of the Board shall be to –

- (1) Ensure proper and efficient exercise of the powers and performance of the functions of the Unit;
- (2) Advise the management of the Unit on the exercise of the powers and performance of the functions of the Unit;
- (3) Approve the estimates of the revenue and expenditure of the Unit for transmission for approval by the County Treasury and County Assembly as guided under the existing laws; and
- (4) Perform such other functions as provided for under this Act or any other written laws.

8. Resignation of Chairman, appointed members

- (1) The Chairman may resign by written resignation addressed to the Governor.
- (2) A member appointed under section 6 (2) (e) may resign by written resignation addressed to the County Executive Committee member.

9. Removal of Chairman, appointed members

- (1) The Governor may remove the Chairman, and the County Executive Committee Member may remove a member appointed under section 6 (2) (e), on a ground set out in subsection (2).
- (2) The grounds referred to in subsection (1) are the following –
 - (a) the Chairman or member is absent without reasonable excuse from three consecutive meetings of the board of the Unit of which he has had notice;
 - (b) the Chairman or member becomes bankrupt;
 - (c) the Chairman or member is convicted of an offence involving dishonesty, fraud or moral turpitude;
 - (d) the Chairman or member is incapacitated by reason of prolonged physical or mental illness from performing his duties as the Chairman or member; or
 - (e) the Chairman or member is otherwise unable or unfit to discharge the functions of his office.

10. Conduct of Business

- (1) The business and affairs of the board of the Unit shall be conducted in accordance with the First Schedule.
- (2) Except as provided in the First Schedule, the board of the Unit may regulate its own procedure.

11. Remuneration of the Board

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

12. Secretary of the Board

The director of the Unit shall be the secretary of the board.

13. Appointment of a Unit Director

(1) The Unit shall be headed by a Director who shall be appointed by the County Public Service Board in consultation with the Executive Committee and approved by the County Assembly.

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

(3) To qualify for appointment as a unit director, a person must –

- (a) possess a degree in business, accounting, finance or any other related field from a recognized university; and
- (b) have had experience in management for a period of not less than seven years;
- (c) meet the requirements of chapter six of the constitution;

14. Tenure of Office

The Unit Director shall hold office for a period of five years, on such terms and conditions of employment as the County Public Service Board may determine, and shall be eligible for re-appointment for a further and final term of five years.

15. Functions of Unit Director

The Unit Director shall in consultation with the Board –

- (a) be responsible for the day to day management and direction of the affairs and transactions of the Unit;
- (b) the exercise, discharge and performance of its objectives, functions and duties;
- (c) the general administration of the Unit; and
- (d) carry out any other function as may from time to time be assigned by the Board.

16. Vacation of Office of Unit Director

The Unit Director may-

- (a) At any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) Be removed from office by the Executive Committee Member on recommendation of the Board, for –
 - (i) Serious violation of the Constitution or any other written law;
 - (ii) Gross misconduct;
 - (iii) Physical or mental incapacity to perform the functions of the office;
 - (iv) Incompetence;
 - (v) Bankruptcy.

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17. Staff of the Unit

(1) The County Executive Committee Member shall deploy, from within the county public service, such staff as are necessary for the proper and efficient discharge of the functions of the Unit under this Act, upon such terms and conditions of service as it may determine in consultation with the Unit.

(2) The Unit shall ensure that there are sufficient number of staff qualified in matters related to finance, economics, investment analysis, project management and any other qualifications.

18. Protection from personal liability

(1) Any act or omission by a member of the Board or by any member of staff, if the act or omission is done in good faith for executing the functions of the Unit under this Act, shall not be liable for such acts or omissions.

(2) Any expenses incurred by any officer in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the unit, shall, if the court holds that such act was done in good faith, be paid out of the funds of the unit, unless such expenses are recovered by him or her in such suit or prosecution.

19. Liability from Damages

The provisions of section 18 shall not relieve the Unit of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any function conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

PART III-FINANCES

20. Funds of the Unit

(1) The funds of the Unit shall consist of funds appropriated by the County Assembly for the purposes of the Unit;

(2) The Unit shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the Unit and as prescribed under this Act.

21. Finances of the Board

(1) The Board may —

(a) accept such gifts, grants or moneys from any lawful source; and

(b) borrow money for the proper functioning of the Unit and carrying out the functions under this Act.

(2) The County Executive Committee Member for Finance shall make regulations under the Public Finance Management Act to allow for the operationalization of Clause 21(b).

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22. Accounts

The secretary of the Board shall cause to be kept proper books and records of accounts of the Unit.

23. Financial Reports and Audit

(1) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Unit together with —

- (a) A statement of the financial position as at the thirtieth day of June;
- (b) A statement of comprehensive income;
- (c) A statement of cash flow for the year ended;
- (d) A summary of significant accounting policies and other explanatory information;

(2) The accounts of the Unit shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

24. Quarterly Report

The Unit shall, every three months, prepare and submit to the Executive Committee Member a report of the operations of the Unit for that quarter.

25. Annual Report

(1) The Unit shall, within three months after the end of each financial year, prepare and submit to the Executive Committee Member a report of the operations of the Unit for the previous year.

(2) The annual report shall provide information regarding the activities and plans of the Authority during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include-

- (a) details of the performance of the Unit against its key performance indicators;
- (b) such information and other material as the Authority may be required by this Act or rules or regulations made thereunder to include in the annual report;
- (c) such additional information or other material as the Executive Committee Member may require in writing.

PART IV— INVESTMENT PROMOTION

26. Investment promotion strategy

(1) The Unit shall prepare a five-year investment promotion strategy which shall be approved by the County Executive Committee.

(2) The investment strategy shall provide for among others—

- (a) identification of targeted investment opportunities;

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- (b) profiling specific investment projects and their respective feasibility studies;
- (c) establishing a database for economic viability of various zones in the county; and
- (c) adoption of specific programs that the county government should undertake to promote investment in the county;

(3) The Unit shall review the investment promotion strategy annually to align it with the prevailing market, investment trends and investment environment.

(4) The Investment promotion strategy shall be utilized in formulating the County Integrated Development Plan.

(5) The Unit shall prepare annual plans for implementing the investment promotion strategy.

27. Collaboration with Other Agencies

The Unit shall collaborate with Kenya Investment Authority and other relevant bodies and institutions, international and local in undertaking its mandate and in the promotion and enhancement of investment in the county.

28. Incentives for Investment

(1) The Unit shall collaborate with the county and other government agencies to obtain the provided for and agreed upon incentives which may include —

- (a) provision of land for investment under a lease agreement;
- (b) reduced rates of payment of land rates and rents;
- (c) reduced prices for permits;
- (d) exemptions under the Income Tax Act;
- (e) Exemptions under the Customs and Excise Act;
- (f) Exemptions under the Value Added Tax Act; and
- (g) Exemptions under any other legislation.

(2) The County Executive Member For Finance shall gazette any of the above listed incentives, including in particular the parties they apply to and the duration of the investment.

29. Prohibition against discrimination

No member of staff or board member shall discriminate against or give special treatment to any prospective investor.

PART V—OFFENCES

30. Misleading the Unit

A person who submits false or misleading information to the Unit for the purposes of obtaining any assistance from the Unit is guilty of an offence, and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

31. Improperly divulging information

19. A person who, without lawful excuse divulges detrimental information acquired in the course of acting under this Act is guilty of an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

32. General Offences.

A person who commits an offence under the provisions of this Act for which no penalty is prescribed, upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

PART VII—GENERAL PROVISIONS

33. Regulations

(1) The Executive Committee Member may make such rules and regulations with regard to the better carrying out of the objects, purposes and functions of this Act including specific investment sectors or particular investments and any other matters required to be carried out under this Act.

(2) Without prejudice to the generality of subsection (1), the rules and regulations may prescribe matters related to the investment promotion strategy.

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MEMORANDUM OF OBJECTS AND REASONS

This Bill of the County Assembly of Murang'a that seeks to provide for establishment of the Murang'a County Investment Unit for promotion and coordination of investment and for connected purposes;

PART I of the Bill provides for preliminary matters including the short title, commencement and the interpretation of words and expressions used in the Bill and the objects and purpose of the Bill.

PART II of the Bill contains provisions the establishment of the unit, the functions of the unit, the Board of the Unit, resignation and appointment of members, conduct of business, tenure of office, staff of the Unit and protection from personal liability and liability from damages.

PART III of the Bill contains provisions on the finances of the unit, including funds of the unit, finances of the board, accounts, financial report and quarterly and annual reports.

Part IV of the Bill is concerned with investment promotion strategies, collaboration with other agencies, incentives for investment and prohibition against discrimination.

Part V of the Bill contains offenses for misleading the unit, improperly divulging information and general offences.

Part VI of the Bill contains on regulations.

This Bill is NOT a money Bill within the meaning of Section 21(4) of the County Governments Act, 2012 and its enactment shall NOT occasion additional expenditure of public funds.

The Bill does not contain provisions limiting the fundamental rights and freedoms set out under the Constitution.

HON. JACINTA NG'ANG'A.

Chairperson, Trade, Industrialization, Cooperative Management, Tourism and Wildlife Committee

County Assembly of Murang'a