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THE BARINGO COUNTY ECONOMIC DEVELOPMENT CORPORATION BILL, 2019

A Bill for

AN ACT of the County Assembly for the establishment, management and administration of a Corporation within Baringo County to be known as the Baringo County Economic Development Corporation and for connected purposes.

ENACTED by the County Assembly of Baringo as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Baringo County Economic Development Corporation Act and shall come into force on a date that the County Executive Member may determine.

Interpretation.

2. In this Act unless the context otherwise requires—
“**person**” means a natural or legal person;
“**Executive Committee Member**” means the County Executive Committee Member in charge of Industry, Trade and Investment or the equivalent;
“**board**” means the Board of the Corporation;
“**corporation**” means the Baringo County Economic Development Corporation;
“**county**” means the Baringo County as established under the *Constitution*;
“**County Executive Committee**” means the Committee as constituted under the Article 179 of the *Constitution of Kenya, 2010* and the County Government Act;
“**County Government**” means the County Government of Baringo.
“**Constitution**” means the *Constitution of Kenya, 2010*;

“Executive Investment Committee” means a Committee comprising of the County Executive Committee Members responsible for Industry, Trade and Investment; Tourism and ICT; Lands, Mining and Natural Resources; Finance and Economic Planning and Community Development, Women Empowerment, Youth and Social Services or their equivalent; and

“Governor” means the Governor of the Baringo County.

PART II— ESTABLISHMENT AND MANAGEMENT OF THE CORPORATION

Establishment of the Corporation.

3. (1) There is established a corporation to be known as Baringo County Economic Development Corporation.

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

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

Objects of the Corporation.

4. The objects and purposes of the Corporation are to—

- (a) promote the economic development County;
- (b) improve the economic well being of in the County; and
- (c) raise revenue on behalf of the County Government.

Functions of the Corporation.

5. The functions of the Corporation shall be to—

- (a) promote and carry on projects that have the potential of turning the County’s rich economic potential into wealth to improve the economic well being of the County;
- (b) promote sectors that have the potential of wealth creation in order to strengthen the competitiveness of the County and well being of the people;

- (c) engaging in industrial and commercial initiatives and transactions on behalf of the County Government for the benefit of the citizens of the County;
- (d) promote entrepreneurship amongst the residents of the County and nurture and expand emerging and new businesses through partnerships and other support;
- (e) undertake any other commercial and economic activities on behalf of the County Government whilst safeguarding the interests of the people of the County.

Seal of the
Corporation.

6. (1) The application of the seal of the Corporation shall be authenticated by the signatures of the Chairperson of the Corporation or some other director authorised by the Corporation to authenticate the application of the seal thereof and of the Chief Executive Officer.

(2) Every document purporting to be an instrument issued by the Corporation and sealed as provided under subsection(1) shall be deemed to be such an instrument without further proof unless the contrary is shown.

Powers of the
Corporation on areas
of strategic interest.

7. The Corporation may on its own or through joint ventures, subcontracting or other modes of business relationships, undertake commercial activities in areas of strategic interest to the County including, amongst others, engaging in—

- (a) tourism including owning and managing county hotels;
- (b) agro-processing including food processing, fruit processing and processing coconut products;
- (c) quarrying activities including the production of Duruma shales, silicas and, buildings and coral stones and other products;
- (d) mining including base minerals, lime and cement;
- (e) housing including residential housing units, office blocks and holiday homes;
- (f) land holding, buying of land from private owners and entering into joint ventures with private land owners and other public entities;
- (g) breeding of animals, fattening and marketing the same;

- (h) industrial parks;
- (i) entertainment industry;
- (j) water and sewerage services;
- (k) generating energy and power to serve the County and beyond; and
- (l) any other commercial activity as may be decided by the Board.

Board of Directors.

8. (1) The management of the Corporation shall vest in the Board of Directors consisting of—

- (a) a Chairperson appointed by the Governor;
- (b) three members nominated by the Executive Investment Committee;
- (c) two persons of opposite gender appointed by the County Executive Member from members of the public residing in the County;
- (d) one person representing the minority community appointed by the County Executive Member.

(2) The Chairperson and other members of the Board shall hold office for a period of three years and shall be eligible for re-appointment for one more term.

(3) A person shall be qualified for appointment as Chairperson or a member of the Board if the person—

- (a) holds a degree from a recognised university;
- (b) has knowledge and experience of at least five years in matters relating to finance management or any other related field;
- (c) meets the requirements of Chapter Six of the *Constitution*; and
- (d) has had a distinguished career in their respective fields.

Chief Executive Officer.

9. There shall be a Chief Executive Officer, appointed by the County Public Service Board, who shall be the Secretary to the Corporation.

Proceedings Board
of Director.

10.(1) The quorum necessary for the transaction of business of the Board of Directors shall be four members, except where regulations made under this Act otherwise provide:

(2) The Chairman of a meeting shall in the case of equality of votes have a second or casting vote.

(3) The proceedings of the Board of Directors of the Corporation shall not be affected by any vacancy amongst the members of the Board or by any defect in the appointment of a Director.

(4) Subject to the provisions of this Act and of any regulations made under this Act, the Board shall regulate its own procedure.

Recording of
Minutes.

11. The Chief Executive Officer shall cause minutes of all proceedings of the Board to be recorded and entered in books kept for that purpose.

Minutes Book.

12. The books containing the minutes of the proceedings of the Board shall remain the property of the Corporation and shall be kept in the custody of the Chief Executive Officer.

Remuneration of the
Directors.

13. The Chairperson and other Directors shall receive such remuneration and allowances as may, from time to time, be determined by the County Executive Member after consultation with the County Executive Member responsible for finance.

Officers and
employees of
the Corporation.

14. The Corporation may appoint such officers and employees as may be necessary for the effective discharge of the functions of the Corporation on such terms and conditions as the Board may determine.

General powers of the Corporation.

15. The Corporation shall have power to—

- (a) provide credit and finance by means of loans or the subscription of loan or share capital or otherwise for industrial and commercial enterprises or other undertakings in the County;
- (b) subscribe for, conditionally or unconditionally underwrite, issue on commission or otherwise, take, hold, deal in and convert shares, stocks, obligations and securities of all kinds;
- (c) enter into partnership, or into any arrangement, except mergers, for participating in undertakings, sharing profits, union of interest, reciprocal concession or co-operation with any person, partnership or company;
- (d) advance, deposit or lend money, securities and property to or with such persons, partnerships or companies and on such terms as may seem expedient; to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrants, coupons, debentures and other negotiable or transferable instruments;
- (e) guarantee or become liable by way of surety or indemnity for the payment of money, or for the performance of any contracts or obligations, and generally to transact all kinds of guarantee, trust or agency business;
- (f) purchase, take on lease, hire or otherwise acquire, and to sell, exchange, surrender, lease, mortgage, charge, convert, turn to account, dispose of and deal with, any movable or immovable property and rights of all kinds;
- (g) sell, exchange, mortgage (with or without power of sale), assign, lease, sublet, improve, manage, develop, dispose of, turn to account, grant rights and privileges in respect of and generally otherwise deal with the whole or any part of the business, estates, property, rights or undertakings of the Corporation, upon any terms, either together or in portions, and as a going concern or otherwise, for such consideration, whether of cash, shares, stocks, obligations or securities, as the corporation may think fit; and

- (h) invest and deal with money upon such securities and in such manner as may from time to time be determined, and to place money on deposit or current account with any bank or building society.

PART III—FINANCIAL MANAGEMENT

Capitalisation of the Corporation.

- 16.(1)** The Corporation shall consist of—
- (a) moneys allocated and appropriated to the Corporation from the County Revenue Corporation, from time to time, by the County Assembly;
 - (b) any grants, gifts, donations, loans or other endowments given to the Corporation;
 - (c) moneys that may accrue to the Corporation in the course of the performance of its functions under this Act; and
 - (d) monies from any other lawful source accruing to the Corporation.
- (2) There shall be paid from the Corporation operational and business expenses incurred in the administration and operations of the Corporation.

Bank accounts.

- 17.(1)** The Board shall open a bank account of the Corporation and such other accounts as it may deem necessary in commercial banks decided by the Board with the approval of the Executive Committee Member.
- (2) The signatories to the bank accounts operated under subsection (1) shall be the Chairperson, Secretary to the Board and two other persons appointed by the Board with the approval of the Executive Committee Member.
- (3) The signing instructions shall be such that the signature of the Secretary to the Board shall be mandatory on all payment cheques or other instrument intended for actual release of money from the Corporation, in addition any two of the other three signatories.

Estimates of income and expenditure.

- 18.(1)** At least three months before the commencement of each financial year, 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 estimates of expenditure of the Corporation for the relevant financial year and shall provide for—

(a) the cost of the administration and operations of the Board, including payment of salaries, allowances, pensions, gratuities and other charges payable to the staff and members of the Board; and

(b) the business investments and other payments and changes of the corporation.

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

(a) differentiate between recurrent and disbursement and business expenditure; and

(b) itemise every activity that the Board intends to undertake in respect of the Corporation in the coming financial year under a separate vote head.

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

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

(6) Upon the approval of the estimates by the County Assembly, all monies appropriated for purposes of the Corporation shall be paid into the relevant accounts operated under section 17.

Annual Report and
Publication.

19.(1) The Board shall, within a period of three months after the end of each financial year or with in such longer period as the Executive Committee Member may approve in writing, submit to the Executive Committee Member a report of the operations of the Corporation during that year.

(2) The Board shall, after submission of the report to the Executive Committee Member, publish the report, in the *County Gazette* and in at least one newspaper of wide circulation in the County.

(3) The Executive Committee Member shall lay the reports before the County Assembly, including the balance sheet and the statements of accounts, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

Accounts and audit.

20.(1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Corporation.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts prepared under subsection (1) in respect of that year together with a statement of—

- (a) the income and expenditure of the Corporation during that year;
- (b) the income and expenditure of the Corporation; and
- (c) the assets and liabilities of the Corporation on the last day of that financial year.

No. 12 of 2003.

(3) The annual accounts referred to under this section shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 299 of the *Constitution* and the Public Audit Act.

Financial year.

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

Powers of Guarantee.

22. The power of the Corporation to guarantee, or become liable by way of surety or indemnity for the payment of money, or the performance of any contracts or obligations, shall be limited to the extent that the aggregate amount remaining undischarged under all liabilities by way of guarantee, surety or indemnity assumed by the Corporation shall not at any time exceed the value, as determined by the Corporation from time to time, of the assets of the Corporation available for meeting that aggregate amount.

Surplus
funds.

23. The Corporation may, after consultation with the County Executive Member and with the approval by the County Executive Member responsible for finance, pay into the County Revenue Fund Account any declared dividends principal and interest on borrowing from the County Government.

PART IV—MISCELLANEOUS

Winding up.

24. The Corporation shall not be wound up except by or under the authority of an Act of the County Assembly of Baringo.

Personally liable.

25. No director or officer of the Corporation shall be personally liable for any act or thing done or omitted to be done in good faith and without negligence in the course of the operations of the Corporation.

Regulations.

26. The County Executive Member may make regulations that are necessary or desirable for the proper conduct of the business of the Corporation and without prejudice to the generality of the foregoing, make regulations regarding the following—

- (a) the convening of the meetings of the Board of Directors and its committees and the procedure to be followed thereat;
- (b) the appointment or establishment of committees of the Board of Directors, and the co-opting of persons to such committees; and
- (c) the brand and type of a common seal and the custody and use thereof.

MEMORANDUM OF OBJECTS AND REASONS

This Bill provides for the legal and institutional framework for the establishment and management of investment and economic corporation in Baringo County.

Part II of the Bill provides for the establishment of the Board of corporation, its functions and its general powers.

Part III provides for financial management of the corporation while **Part IV** contains investment management and the miscellaneous provisions..

Date: 25th August, 2019.

Hon . Silas Tochim

MCA—TENGENES WARD

Chairperson Tourism, Trade and Cooperatives Committee