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REPUBLIC OF KENYA

PARLIAMENT

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SENATE BILLS

*(Bill No. 42 of 2021)*

**THE INVESTMENT PROMOTION  
(AMENDMENT) BILL, 2021**

(A Bill published in the Kenya Gazette Supplement No. 11 of 10<sup>th</sup> February, 2021 and passed by the Senate, with amendments on 21<sup>st</sup> October, 2021)



**THE INVESTMENT PROMOTION (AMENDMENT)  
BILL, 2021**

**A Bill for**

**AN ACT of Parliament to amend the Investment  
Promotion Act and for connected purposes.**

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

Short title.

**1.** This Act may be cited as the Investment Promotion  
(Amendment) Act, 2021.

Amendment  
of section 2  
of No. 6 of  
2004.

**2.** Section 2 of the Investment Promotion Act, in this  
Act referred to as “the principal Act” is amended —

(a) by deleting the definition of the word “Minister” and  
substituting therefor the following new definition —

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

(b) by inserting in the proper alphabetical sequence the  
following new definitions —

“Board” means the Board established under  
section 16;

“Council” means the National Investment  
Council established under section 26;

No. 2 of  
2012.

“Council of County Governors” means the  
Council of County Governors established under  
section 19 of the Intergovernmental Relations Act;

“county executive committee member” means  
the county executive committee member for the  
time being responsible for matters relating to  
investment promotion in the county;

No. 17 of

“county public service board” means the county  
public service board established in accordance with  
section 57 of the County Governments Act; and

2012.

“Managing Director” means a person appointed under section 23.

Amendment  
of section 3  
of No. 6 of  
2004.

3. Section 3 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection —

(4) The Authority may request clarification and additional information relating to the proposed investment, in writing, in support of an application for an investment certificate.

Amendment  
of section  
16 of No. 6  
of 2004.

4. The principal Act is amended by deleting section 16 and substituting therefor the following new sections —

Board of Authority.

16. (1) The management of the Authority shall vest in a board which shall comprise —

- (a) a chairperson appointed by the President with the approval of Parliament;
- (b) the Principal Secretary responsible for matters relating to finance or their designated representative, in writing;
- (c) the Principal Secretary responsible for matters relating to trade and industry or their designated representative, in writing;
- (d) the Principal Secretary responsible for matters relating to devolution or their designated representative, in writing;
- (e) the chief executive officer of the Export Processing Zones Authority established under the Export Processing Zones Act;
- (f) the chief executive officer of the Export Promotion Council;
- (g) three members, who shall include a person with disability and at least one

No. 12 of 1990.

person of the opposite gender, nominated by the Council of the County Governors and appointed by the Cabinet Secretary; and

- (h) the Managing Director of the Authority who shall be an *ex-officio* member of the board, secretary to the board and the Chief Executive Officer of the Authority.

(2) The Managing Director shall have no right to vote at any meeting of the board.

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(3) The appointment of the chairperson and the members of the board shall be by notice in the *Gazette*.

(4) The alternative representatives of the members referred to under subsection (1) (b), (c) and (d) shall have authority to exercise the powers and functions of the designating authority in relation to matters before the board.

Amendment  
of section  
16 of No. 6  
of 2004.

5. The principal Act is amended by inserting the following new section immediately after section 16 —

Qualifications for  
appointment.

16A. A person shall be qualified for appointment as a member of the board if that person —

- (a) holds a degree from a university recognised in Kenya;
- (b) has knowledge and at least five years demonstrable experience in the business sector;
- (c) meets the requirements of Chapter Six of the Constitution;
- (d) has not been adjudged bankrupt; and
- (e) has not been convicted of an offence and sentenced to imprisonment for at

least six months.

Amendment  
of section  
17 of No. 6  
of 2004.

6. The principal Act is amended by deleting section 17 and substituting therefor the following new section —

Term of office.

17. A member of the board appointed under section 16(1) (a) or (g) shall hold office for a term of three years and is eligible for reappointment for one further term.

Amendment  
of section  
18 of No. 6  
of 2004.

7. The principal Act is amended by deleting section 18 and substituting therefor the following new section —

Vacation of office.

18. The office of a member of the Board appointed under section 16(1) (a) or (g) shall become vacant if that person —

- (a) is unable to perform the functions of their office by reason of mental or physical infirmity;
- (b) is otherwise unable or unfit to continue serving as a member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) in the case of the Chairperson, resigns in writing addressed to the President;
- (g) in the case of a member appointed under section 16(1) (g), resigns in writing addressed to the Cabinet Secretary;
- (h) fails to declare their interest in any

*The Investment Promotion (Amendment) Bill, 2021*

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matter being considered or to be considered by the Board; or

(i) dies.

Amendment  
of section  
19 of No. 6  
of 2004.

8. The principal Act is amended by deleting section 19.

Amendment  
of section  
20 of No. 6  
of 2004.

9. The principal Act is amended by deleting section 20 and substituting therefor the following new section —

Remuneration of  
Board members.

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

Amendment  
of section  
22 of No. 6  
of 2004.

10. The principal Act is amended by deleting section 22.

Amendment  
of section  
23 of No. 6  
of 2004.

11. The principal Act is amended by deleting section 23 and substituting therefor the following new section —

Managing Director.

23. (1) There shall be a Managing Director of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

(2) A person is qualified for appointment as Managing Director of the board if that person —

- (a) holds a masters degree from a university recognised in Kenya;
- (b) has knowledge and at least seven years experience in the business sector;
- (c) meets the requirements of Chapter Six of the Constitution;

- (d) has not been adjudged bankrupt; and
- (e) has not been convicted of an offence and sentenced to imprisonment for at least six months.

Amendment  
of section  
23 of No. 6  
of 2004.

12. The principal Act is amended by inserting the following new section immediately after the proposed section 23 —

Tenure of office of  
Managing Director.

23A. The Managing Director shall hold office for a term of five years and is eligible for reappointment for one further term.

Functions of the  
Managing Director.

23B. (1) The Managing Director shall be the chief executive officer of the Authority and secretary to the Board.

(2) In exercise of functions under this Act, the Managing Director shall, subject to the direction of the Board —

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Authority;
- (e) cause to be prepared for the approval of the Board—
  - (i) the strategic plan and annual plan of the Authority; and
  - (ii) the annual budget and audited accounts of the Authority; and
- (f) perform such other duties as may be assigned to the Managing Director by the Board.

Removal from  
office of Managing  
Director.

23C. The Board may terminate the appointment of the Managing Director in

accordance with the Managing Director's 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 misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

Amendment  
of section  
24 of No. 6  
of 2004.

13. The principal Act is amended by deleting section 24 and substituting therefor the following new section —

Staff of the  
Authority.

24. (1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

Amendment  
of section  
25 of No. 6  
of 2004.

14. The principal Act is amended by deleting section 25 and substituting therefor the following new section —

Protection from  
personal liability.

25. (1) No matter or thing done by an officer or an employee of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the officer or employee so acting, personally liable for any action, claim or demand.

(2) Subsection (1) shall not relieve the Authority from liability to pay compensation or damages to any person for any injury to that person, or other loss caused by the



exercise of any power conferred by this Act or any other written law or by the failure of any works of the Authority.

Amendment  
of section  
26 of No. 6  
of 2004.

15. Section 26 of the principal Act is amended —

- (a) in paragraph (b) by deleting sub paragraph (v) and substituting therefor the following new sub paragraph —

(v) devolution;

- (b) by deleting sub paragraph (e) and substituting therefor the following new paragraph —

(e) eight persons appointed by the President to represent the private sector, each of whom has distinguished himself in the field of law, economics, commerce, industry or management; and

- (c) inserting the following new paragraph immediately after the proposed new paragraph (e) —

(f) four persons nominated by the Council of County Governors to represent the interests of the counties.

Amendment  
of section  
26 of No. 6  
of 2004.

16. The principal Act is amended by inserting the following new section immediately after section 26 —

Equity in  
appointments.

26A. The President shall, while appointing the members of the Council, ensure gender equity, representation of persons with disability, youth and marginalised groups.

Investment in  
counties.

26B. In considering an entitlement to an investment certificate for a local or a foreign investor, the Authority shall consult the county executive committee member in the

respective county in which the investment is to be undertaken.

County Investment Unit.

26C. (1) Each county executive committee member shall by notice in the Gazette designate a unit within the county to be responsible for matters relating to investment promotion in the county.

(2) The Unit shall be headed by the Chief Officer responsible for trade within the county.

(3) The respective county public service board shall assign, from within the county public service such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Unit under this Act.

Functions of the County Investment Unit.

26D. (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 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;
- (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; and
- (g) work closely with the Authority to provide effective investor aftercare and support the Authority in facilitating reinvestment and upgrading of current investments.

(2) The Unit shall, in carrying out its functions under subsection (1), undertake public participation through the modalities and platforms set out under section 91 of the County Governments Act.

*The Investment Promotion (Amendment) Bill, 2021*

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I certify that this printed impression is a true copy of the Bill as passed by the Senate on 21<sup>st</sup> October, 2021.



*Clerk of the Senate*

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Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



*Speaker of the Senate*