SPECIAL ISSUE

Kenya Gazette Supplement No 2 (Narok County Acts No 1)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NAROK COUNTY ACTS, 2015

NAIROBI, 23rd November, 2015

CONTENT

Act—                                                                                              Page

The Narok County Investment Promotion Act, 2015                                                  1
THE NAROK COUNTY INVESTMENT PROMOTION ACT, 2015

No 1 of 2015

Date of Assent 16th November, 2015

Date of Commencement See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARIES

1—Short title
2—Interpretation
3—Objects and Purpose of the Act

PART II—INVESTMENT PROMOTION BOARD

4—Establishment of Narok County Investment Promotion Board
5—Functions of the Board
6—Board of Directors
7—Chief Executive Officer
8—Conduct of Affairs of the Board
9—Corporate Governance
10—Annual Report
11—Vacation of Office
12—Conflict of Interest
13—Code of Conduct

PART III—INVESTMENT CERTIFICATE

14—Application
15—Entitlement to Investment certificate
16—Consideration of benefits to the County
17—Procedures for Consideration
18—Issuance of Certificate
19—Conditions of the Certificate
20—Transfer and Amendment
21—Revocation
22—Review of Board decision

PART IV—BENEFITS OF INVESTMENT CERTIFICATE

23—Entitlement to Licenses

PART V—INVESTMENT PROMOTION

24—Investment promotion strategy
25—Partnerships

PART VI—FINANCES AND ACCOUNTING

26—Funds of the Board
27—Annual Estimates
28—Accounts and Audits

PART VII—GENERAL PROVISIONS

29—Regulations
30—Transition

PART VIII—SCHEDULES

FIRST SCHEDULE     Conduct of Business and Affairs of the Narok Investment Promotion Board

SECOND SCHEDULE    Procedures For Consideration Of Application For Investment Certificate
THE NAROK COUNTY INVESTMENT PROMOTION ACT, 2015

AN ACT of the County Assembly of Narok to promote, encourage and facilitate investments by providing enabling investing environment and for matters incidental thereto

ENACTED by the County Assembly of Narok as follows—

PART I—PRELIMINARIES

Short title

1 This Act may be cited as the Narok County Investment Promotion Act, 2015 and shall come into operation on such a date as the Governor may, by notice in the Gazette, appoint

Interpretation

2 In this Act, unless the context otherwise requires—

“board” means the Narok County Investment Promotion Board established under section 4 of the Act,

“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, including the creation or acquisition of business assets by or for a business enterprise and includes the expansion, restructuring, improvement or rehabilitation of a business enterprise,

“investment certificate” means an investment certificate issued under this Act,

“licence” includes a registration, permit, approval or authorization required by law regardless of how it is described,

“local investor” means—

(a) a natural person who is a citizen of Kenya,

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

(c) company incorporated under the laws of Kenya, in which the majority of shares are held by a person or persons who are citizens of Kenya, or
(d) a trust or trust corporation established under the Laws of Kenya, in which the majority of trustees and beneficiaries are citizens of Kenya

“county executive committee member” means County Executive Committee Member for the time being in charge of investment

Objects and Purpose of the Act

3 The Objects and Purposes of the Act are to—

(a) promote and facilitate investments in Narok County,
(b) provide an enabling environment for investors,
(c) promote of ease of business by mainstreaming licensing and regulatory compliance, and
(d) develop integrated infrastructure facilities to enhance investments

PART II—COUNTRY INVESTMENT PROMOTION BOARD

Establishment of County Investment Promotion Board

4 (1) There is established a body to be known as the Narok County Investment Promotion Board

(2) The Board 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) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property in and out of Kenya,
(c) entering into contracts,
(d) borrowing or receiving money including having its own Fund, and
(e) doing or causing to be done or performing all such things or acts for the proper performance of its functions under this Act, as may be lawfully done or performed by a corporate body

Functions of the Board

5 The functions of the Board shall be to—

(a) promote and facilitate investment in Narok County,
(b) in promoting and facilitating investment, the Board shall—
(i) assist foreign, local investors and potential investors by issuing investment certificates and in obtaining any necessary licenses and permits,

(ii) assist in obtaining incentives or exemptions under the relevant tax regimes,

(iii) assist in obtaining lease in public, private or community land,

(iv) providing information, including information on investment opportunities or sources of capital,

(c) promote, both locally and internationally, the opportunities for investment in Narok County,

(d) review the investment environment and make recommendations to the County Government and others, with respect to changes that would promote and facilitate investment, including changes to licensing requirements,

(e) issuing letters of support and introduction to investors for use by other county and national government agencies,

(f) facilitate and manage investment sites, estates or land together with associated facilities on the sites, estates and land,

(g) appoint agents within the country and in any other country to carry out certain functions on its behalf, as it may consider necessary,

(h) carry out research, study and publish findings on investment and investment opportunities in the county,

(i) acting as the focal agency for investment promotion and facilitation in the county,

(j) make recommendations the to the Special Economic Zones Authority and Cabinet Secretary under the Special Economic Zones Act on all aspects of designation, approval, establishment, operation and regulation of special economic zones within Narok County,

(k) advising County Executive Committee on necessary policies, programs and plans to be adopted in order to attract and promote investments in the county, and

(l) carry out such other activities as, in the Board’s opinion, will promote and facilitate investment
Board of Directors

6 (1) The Board shall be administered by a Board of Directors, which shall consist of—

(a) a non-executive Chairperson to be appointed by the Governor,
(b) the Chief Officer of the department for the time being responsible for matters relating to investment or his designated alternate,
(c) the Chief Officer to the county treasury or his designated alternate,
(d) two other directors appointed by the Governor, from the private sector or any other public institution being persons who have distinguished service, relevant experience, and expertise,
(e) the Chief Executive Officer who shall be an ex officio member.

(2) The term of office for the chairperson, a member appointed under sub sections (1) (d) and the Chief Executive Officer shall be three years, which may be renewed for one further term.

Chief Executive Officer

7 (1) There shall be a Chief Executive Officer of the Board who shall be appointed competitively by the County Public Service Board

(2) The Chief Executive Officer shall—

(a) be the secretary to the Board, and
(b) subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board

(3) No person shall be appointed under this section unless such person—

(a) possesses a degree in trade, law, finance, economics, management or entrepreneurship from a recognized institution and has at least five years working experience in the related field,

(b) satisfies the requirements of Chapter Six of the Constitution

Conduct of Affairs of the Board

8 (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the First Schedule

(2) Except as provided in the First Schedule, the Board may regulate its own procedure.
PART IV—BENEFITS OF INVESTMENT CERTIFICATES

Entitlement to Licenses

23 (1) An investment certificate shall set out the Licenses that are necessary to the proposed investment and to which the holder of the investment certificate would, on application, be legally entitled.

(2) Upon the issue of an investment certificate, the following apply with respect to each License set out in the certificate under subsection 23(1)—

(a) the holder of the investment certificate is entitled to have the License issued, subject to any conditions set out in the investment certificate, upon application made within twelve months after the investment certificate is issued and upon payment of the applicable fee, if any, and

(b) until the License is issued or twelve months elapse after the investment certificate is issued, whichever occurs first, the License shall be deemed to have been issued, subject to any conditions set out in the investment certificate and subject to the requirement to pay fees under subsection 23(3).

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

(4) The entitlement to Licenses under subsection 23(2)(a) is for the initial issue of such Licenses only and following that initial issue the laws under which the Licenses are issued apply in the same way as they apply to all Licenses, including, with respect to the revocation or renewal of the Licenses.

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

PART V—INVESTMENT PROMOTION

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

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

(a) targeted sources of investment capital,

(b) targeted investment opportunities,
(c) specific investment projects and their respective projects appraisals that should be undertaken by the county government in order to promote investment in the county,

(d) estimated cost of the investments,

(e) any other matter as the Executive Member may prescribe

(3) The Board shall not undertake any investment promotion activity unless it is stipulated under the plan

(4) The Board may review the investment promotion strategy after each year in order to align it with the prevailing investment environment and trends

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

Partnerships

25 The Board may enter into partnership or collaboration with any entity for the purposes of carrying out the objectives of this Act

PART VI—FINANCES AND ACCOUNTING

Funds of the Board

26 Funds of the Board shall consist of—

(a) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers of performance of its functions under these rules,

(b) such monies appropriated by the County Assembly,

(c) such monies as may be payable to the Board,

(d) donations, gifts and endowments from lawful organizations or sources,

(e) proceeds of any investments by the Board, and

(f) government grant and or budgetary appropriation from the County Assembly

Annual Estimates

27 (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that financial year

(2) The annual estimates shall make provisions for all estimated expenditure of the Board both recurrent and development for the financial year concerned
(3) The annual estimates shall be approved by the County Assembly before the commencement of the financial year to which they relate.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved.

Accounts and Audits

28 The Board shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Board.

PART VII—GENERAL PROVISIONS

Regulations

29 (1) The Executive Committee Member may, in consultation with the Board make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

(a) prescribe for the guidelines for undertaking investment or project appraisal, and

(b) prescribe matters related to investment promotion strategy.

Transition

30 For the purpose of efficient promotion of investments in Narok County, the Governor may appoint an interim Board for a period of not more than six months.
CONDUCT OF BUSINESS AND AFFAIRS OF THE NAROK COUNTY INVESTMENT PROMOTION BOARD

1. (1) The board shall have at least one meeting in every quarter and not more than three months shall elapse between one meeting and the next meeting.

(2) Meetings shall be convened by the Secretary to the Board, on the instructions of the Chairman or upon the requisition of at least three members of the Board.

(3) Unless all the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairman, or in his absence, by a person elected by the board at the meeting for that purpose.

2. A member described in paragraph (b) and (c) of section 6(1) may designate one of the following persons as a representative to attend a meeting of the board in the member's absence—

(a) the member's deputy, or

(b) a person who is under the authority of the member and whose rank is the same as or higher than the rank of the member's deputy.

3. Three members of the board shall constitute a quorum.

4. A decision of the board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

5. (1) The Board may establish committees and delegate to any such committee such of its functions as it considers advisable.

(2) The Board may appoint persons who are not members of the board as members of a committee established under sub-paragraph (1).
SECOND SCHEDULE (Sec 17)

PROCEDURES FOR CONSIDERATION OF APPLICATION FOR INVESTMENT CERTIFICATE

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

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

3. Within five working days after the decision of the Board is made, the Board shall give the applicant a written notice of the decision.

4. If the Board decides to refuse to issue an investment certificate, the Board shall—
   (a) prepare written reasons,
   (b) include, with the notice to the applicant under paragraph 4, a copy of the reasons and a copy of the report prepared under paragraph 1,
   (c) give the County Executive Committee Member, within five working days after the decision of the Board is made, a copy of the application, a copy of the reasons and a copy of the report prepared under paragraph 1.

5. (1) If an applicant does not receive a notice of the Board’s decision under paragraph 3 within twenty-five working days after the completed application was given to the Board, the applicant may make a written complaint to the County Executive Committee Member.
   (2) The County Executive Committee Member shall investigate a complaint made under sub paragraph (1) and shall, within fifteen working days after the complaint was received, inform the applicant of the results of the investigation.

6. (1) This paragraph applies if an application raises any of the following issues—
   (a) an environmental, health or security issue that, in the Opinion of the Board, should be referred to another person or body, or
   (b) an issue in relation to which the approval or consent of another person or body is required,
   (c) if an application raises an issue described in sub paragraph (a), the Board shall refer the issue to the appropriate person or body and shall inform the applicant of that referral.
(3) For the purposes of applying, any time periods specified in this Schedule, the time between a referral under paragraph 1 and the response back from the person or body to which the referral was made, shall not be counted.

(4) The Board shall liaise with the appropriate authorities for the purposes of determining whether an applicant for an investment certificate is legally entitled to the relevant Licenses.