

THE KENYA DEVELOPMENT BANK BILL, 2020

ARRANGEMENT OF CLAUSES

PART I – PRELIMINARY

- 1 - Short title and commencement.
- 2 - Interpretation.
- 3 - Exclusion of the Banking Act.

PART II – ESTABLISHMENT OF THE KENYA DEVELOPMENT BANK

- 4 - Establishment of the Bank.
- 5 - Functions of the Bank.
- 6 - Establishment and composition of the Board.
- 7 - Powers of the Bank.
- 8 - Borrowing powers.
- 9 - Power of guarantee, etc.
- 10 - Power of Cabinet Secretary to give directions.
- 11 - Remuneration of members of the Board.
- 12 - Conduct of business and affairs of the Board.
- 13 - The Director-General.
- 14 - Secretary to the Bank
- 15 - Staff of the Bank.
- 16 - Protection from liability.

PART III – FINANCIAL PROVISIONS

- 17 - Funds of the Bank.
- 18 - Capital of the Bank.
- 19 - Advances or grants by the Government.
- 20 - Surplus funds.
- 21 - Accounts and audit.

PART IV – MISCELLANEOUS PROVISIONS

- 22 - Winding up.
- 23 - Application of the Companies Act, 2015.
- 24 - Common seal.
- 25 - Regulations.

PART V – REPEALS, TRANSITIONAL AND SAVING PROVISIONS

- 26 - Interpretation of Part.
- 27 - Repeal of Cap.445.

- 28 - Consequential amendment to No. 28 of 2011
- 29 - Rights and obligations.
- 30 - Assets and liabilities.
- 31 - Transfer of staff.
- 32 - Legal proceedings.
- 33 - Existing contracts.
- 34 - Existing licence or permit.

SCHEDULE - Provisions as to the conduct of business and affairs of the board

DRAFT FOR PUBLIC COMMENTS

THE KENYA DEVELOPMENT BANK BILL, 2020

A Bill for

AN ACT of Parliament to provide for the establishment of the Kenya Development Bank; to facilitate the industrial and economic development of Kenya and for connected purposes.

ENACTED by Parliament of Kenya as follows—

PART I – PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Kenya Development Bank Act, 2020.

(2) This Act shall come into operation on such a date as the Cabinet Secretary may, by notice in the *Gazette*, appoint and different dates may be appointed for the coming into operation of different provisions.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Bank” means the Kenya Development Bank established under section 4;

“Board” means the Board of the Bank established under section 6;

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

No. 17 of 2015.

“company” has the meaning assigned to it under section 3 of the Companies Act, 2015;

“Director-General” means the Director-General of the Bank appointed under section 14; and

“Secretary” means the secretary of the Bank appointed under section 14.

Exclusion of the Banking Act. Cap 488.

3. The provisions of section 3(1)(c) of the Banking Act shall not apply to this Act with regard to the use of the word “Development Bank”.

PART II – ESTABLISHMENT OF THE KENYA DEVELOPMENT BANK

Establishment of the Bank.

4. (1) There is established a corporation to be known as the Kenya Development Bank whose management shall vest in the Board

established under section 6.

(2) The Bank 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) acquiring, holding or disposing of movable and immovable properties for the purposes of this Act; and
- (c) performing such other acts as are necessary for the proper discharge of its functions under this Act or any other written law.

Functions of the Bank.

5. (1) The principal function of the Bank shall be to facilitate the industrial and economic development of Kenya by the initiation, assistance or expansion of industrial, commercial or other undertakings and enterprises.

(2) Without prejudice to the generality of subsection (1), the Bank shall—

- (a) promote sustainable economic development by providing development finance, infrastructure finance, business support and advisory services to medium and large-scale industries, infrastructure projects and commercial undertakings in target sectors;
- (b) establish, participate by way of joint or private equity ventures, finance or otherwise assist in the establishment of companies for execution of undertakings, works, projects or enterprises whether public or private and to acquire, underwrite and dispose of shares and interests in such companies;
- (c) provide venture capital, seed capital and risk capital for the development of industries; and
- (d) perform such other acts as may be necessary for the proper discharge of its functions.

(3) In the exercise of its functions under this Act, the Bank shall have regard to the desirability of—

- (a) acting principally as an auxiliary finance organization and not as the sole source of the provision of finance in respect of any particular undertaking or enterprise;
- (b) exercising its power of affording financial assistance, except

where the Cabinet Secretary otherwise directs, by way of guarantee, loan or investment and not by way of grant or subsidy; and

- (c) requiring early liquidation or repayment of any guarantee, loan or investment made by the Bank to ensure the availability of liquid resources of the Bank for other purposes under this Act.

Establishment and composition of the Board.

of—
6. (1) There shall be a management Board of the Bank consisting

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary responsible for matters relating to finance or his representative designated in writing ;
- (c) the Principal Secretary responsible for matters relating to industrialization or his representative designated in writing;
- (d) the Principal Secretary responsible for matters relating to tourism or his representative designated in writing;
- (e) the Attorney-General or his representative designated in writing; and
- (f) four persons appointed by the Cabinet Secretary who have experience and capacity in industry, socio-economic development, business, commerce, finance, economics, engineering, accountancy, law or administration.

(2) The members of the Board, other than *ex officio* members, shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(3) The members of the Board shall be appointed at different times so that their terms of office expire at different times.

(4) The validity of any proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

(5) A member, other than an *ex-officio* member, may—

- (a) resign from office by notice in writing to the Cabinet Secretary; and

- (b) be removed from office by the Cabinet Secretary, on recommendation of the Board, if the member—

- (i) has become bankrupt or has made an arrangement with his creditors; or
- (ii) is incapacitated by physical or mental illness;
- (iii) has been absent from three consecutive meetings of the Board without the permission of the Board;
- (iv) is convicted of an offence by a court and sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (v) is otherwise unable or unfit to discharge the functions of a member of the Board.

Powers of the Bank.

7. The Bank shall have all the powers necessary for the proper performance of its functions under this Act, and, in particular, it shall have power—

- (a) to provide credit or finance by means of a loan, subscription of a loan or share capital or otherwise for industrial, commercial or other undertakings or enterprises in Kenya or elsewhere;
- (b) to subscribe for, conditionally or unconditionally, to underwrite, issue on commission or otherwise, take, hold deal in and convert shares, stocks, obligations and securities of all kinds and enter into partnership, or into any arrangement for participating in undertakings, sharing profits, union of interest, reciprocal;
- (c) to advance, deposit or lend money, securities or property to or with such persons, partnerships or companies and on such terms as may seem expedient;
- (d) to deal in bills, notes, bills of lading, warrants, coupons, debentures and other negotiable or transferable instruments;
- (e) subject to section 9, to guarantee or become liable by way of suretyship or indemnity for the payment of money, or for the performance of any contract or obligation, and generally to transact all kinds of guarantee, trust or agency business;
- (f) to 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) to purchase, acquire and carry on the business, property,

goodwill and assets of any person, partnership or company carrying on, or proposing to carry on, any authorized business that may benefit the Bank;

- (h) to acquire an interest in, amalgamate with or enter into any arrangement for profit sharing, co-operation, limit competition or mutual assistance;
- (i) to issue or accept cash, shares, stocks, obligations or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, stocks, obligations or securities so received;
- (j) to sell, exchange, mortgage (with or without power of sale), assign, lease, sublet, manage, develop, grant rights and privileges in respect of the business, estates, property, rights or undertakings of the Bank for such consideration as the Bank may think fit;
- (k) to 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;
- (l) subject to the provisions of section 8, to raise or borrow money, with or without security;
- (m) to secure the payment of money by the issuing debentures, bonds, mortgage, charge, hypothecation, lien or pledge of the undertaking, property, assets and rights of the Bank, in such manner and on such terms as to secure the performance of any obligation;
- (n) to act as the manager, agent or secretary of any undertaking and to nominate or appoint any person to act as director of, or in any other capacity in relation to any undertaking, and to act as the agent or representative of any undertaking, whether carrying on business in Kenya or elsewhere; and
- (o) to undertake any other activity necessary for the fulfilment of any of its functions under this Act.

Borrowing powers.

8. (1) The borrowing powers of the Bank shall be exercisable only with the approval of the Cabinet Secretary as to amount, the sources of

the borrowing and the terms and conditions on which the borrowing may be effected.

(2) Any approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise, and may be either conditional or unconditional.

(3) A person lending money to the Bank shall not be bound to inquire whether the borrowing of money is within the power of the Bank or be concerned to see to the application thereof or be answerable for any loss or misapplication thereof.

Powers of guarantee, etc.

9. The power of the Bank to guarantee, or become liable by way of suretyship 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, suretyship or indemnity assumed by the Bank shall not at any time exceed the value, as determined by the Cabinet Secretary, of the assets of the Bank available for meeting that aggregate amount.

Power of Cabinet Secretary to give directions.

10. The Bank shall, in the exercise of its powers and in the performance of its function under this Act or any other written law, act in accordance with any general or special directions issued by the Cabinet Secretary.

Remuneration of members of the Board.

11. The members of the Board shall be paid such remuneration and allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Conduct of business and affairs of the Board.

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

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

The Director-General.

13. (1) There shall be a Director-General of the Bank who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Director-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

(3) The Director-General shall be chief executive officer of the Bank

and shall—

- (a) be responsible for the day-to-day management of the Bank;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Bank;
- (c) be responsible for the management of the staff of the Bank; and
- (d) perform such other duties as may be assigned by the Board.

Secretary to the Bank.

14. (1) There shall be a Secretary to the Bank who shall be appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

(2) The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and performing such other duties as the Board may direct.

(3) In the performance of his duties under this Act, the Secretary shall be responsible to the Director-General.

Staff of the Bank.

15. The Bank may appoint such officers and other staff as the Bank may consider necessary for the proper discharge of its functions, on such terms and conditions of service as the Bank may determine.

Protection from liability.

16. A member of the Board or an officer, employee or agent of the Bank shall not be personally liable for any act or thing done *bonafide* in the course of executing the functions, powers or duties of the Bank.

PART III – FINANCIAL PROVISIONS

Funds of the Bank.

17. The funds of the Bank shall consist of—

- (a) the capital of the Bank;
- (b) monies appropriated by the Parliament for the purposes of the Bank;
- (c) donations, grants, loans or gifts approved by the Cabinet Secretary; and
- (d) such funds as may accrue to or vest in the Bank in the performance of its functions under this Act or any written law.

Capital of the Bank.

18. (1) The authorized capital of the Bank shall be one hundred billion Kenya Shillings divided into twenty billion shares of the par value

of five Kenya Shillings each.

(2) The Government of Kenya may subscribe for the said twenty billion shares or such other amount as the Cabinet Secretary may from time to time determine.

(3) The Bank may, with the approval of the Cabinet Secretary, vary the amount of the authorized capital of the Bank and the par value of the Bank's shares.

Advances or grants
by the
Government.

19. The Cabinet Secretary may, with the consent of the National Assembly, make advances or grants to the Bank to enable the Bank to fulfil any of its obligations.

Surplus funds.

20. The Cabinet Secretary may, from time to time, direct the Bank to pay into the Consolidated Fund any money held by the Bank and deemed by the Cabinet Secretary to be surplus to its existing or anticipated requirements.

Accounts and
audit.

21. (1) The Board shall cause to be kept proper books and records of accounts and such other records as are necessary to give a true and fair view of the state of the Bank's affairs.

No. 18 of 2012.

(2) The books and records of accounts of the income, expenditure, assets and liabilities of the Bank shall be kept and maintained in accordance with the Public Finance Management Act, 2012.

No. 34 of 2015

(3) The accounts of the Bank shall be audited annually by the Auditor-General in accordance with the Public Audit Act, 2015.

PART IV – MISCELLANEOUS PROVISIONS

Winding up.

22. The Bank shall not be wound up except by or under the authority of an Act of Parliament.

Application of the
Companies Act,
2015.

23. The Cabinet Secretary may from time to time, by order published in the *Gazette*, apply to the Bank any provision of the Companies Act, 2015 not being inconsistent with the provisions of this Act, and where any such order is made, that provision shall apply to the Bank as it applies to a company within the meaning of the Companies Act, 2015.

No. 17 of 2015

Common seal.

24. (1) The application of the seal of the Bank shall be authenticated by the signatures of the chairperson and another member authorized by the Board to authenticate the application of the seal.

(2) Where the seal of the Bank is affixed to any document and duly authenticated under this section, it shall be judicially and officially noticed unless the contrary is proved.

Regulations.

25. The Cabinet Secretary may, after consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

PART V – REPEALS, TRANSITIONAL AND SAVING PROVISIONS

Interpretation of Part.

26. (1) In this Part–

“former corporations” means–

- (a) the Industrial and Commercial Development Corporation;
- (b) the Tourism Finance Corporation; and
- (c) IDB Capital Limited;

“IDB Capital Limited” means the company registered as in Kenya, under the Companies Act ;

Cap. 445.

“Industrial and Commercial Development Corporation” means the Industrial and Commercial Development Corporation established under the Industrial and Commercial Corporation Act;

No.28 of 2011.

“Tourism Finance Corporation” means the Tourism Finance Corporation established under section 75 of the Tourism Act, 2011; and

“transition period” means period of one year following the date of effectiveness of this Act or such period as may be determined by the Cabinet Secretary in consultation with the Board;

(2) The Bank shall be the successor to the former corporations existing immediately before the commencement of this Act.

Repeal of Cap.445.

27. The Industrial and Commercial Development Corporation Act is repealed.

Consequential amendment to No. 28 of 2011.

28. The Tourism Act, 2011 is amended–

- (a) in the definition of the word “tourism agencies” under section 2 by deleting the words “the Corporation”;

- (b) by repealing section 75;
- (c) by repealing section 76;
- (d) by repealing section 77;
- (e) by repealing section 78;
- (f) by repealing section 79;
- (g) by repealing section 80;
- (h) by repealing section 81;
- (i) by repealing section 82;
- (j) by repealing section 83;
- (k) by repealing section 84;
- (l) by repealing section 85;
- (m) by repealing section 86; and
- (n) by repealing the Eighth Schedule.

Rights and obligations.

29. All rights and obligations of the former corporations existing at the commencement of this Act shall, by virtue of this section, be transferred to the Bank, and any reference to the former corporations shall be deemed to be a reference to the Bank established under this Act.

Assets and liabilities.

30. The assets and liabilities accrued in respect of the properties vested in the former corporations by any legal instrument in force immediately before the commencement of this Act shall, by virtue of this section, be transferred, vested in, imposed or be enforceable against the Bank established under this Act.

Transfer of staff.

31. (1) Any person who immediately before the commencement of this Act was a member of a Board of the former corporations shall cease to be a member of that Board upon the commencement of this Act.

(2) Any person who immediately before the commencement of this Act was an officer or employee of the former corporations shall continue to hold or act in that office as if appointed to that position under this Act, and all benefits accruing to that person under the repealed Act shall continue accruing to them under this Act.

(3) For the purpose of ensuring effective management of the Bank during the transition period, the Cabinet Secretary may appoint an interim Director-General to perform the functions of the Director-General for a period of one year or such other period as the Cabinet Secretary may, in consultation with the Board, determine.

Legal proceedings. **32.** Any proceedings taken by or against the former corporations immediately before the commencement of this Act may be continued by or prosecuted against by the Bank established under this Act.

Existing contracts. **33.** A contract subsisting between the former corporations and another person before the commencement of this Act shall subsist between that person and the Bank established under this Act.

Existing licence or permit. **34.** Any right contained in a licence or permit issued by the Tourism Finance Corporation subsisting immediately before the commencement of this Act shall, with the approval of the Cabinet Secretary, be deemed to have been issued under this Act and remain in force for the unexpired period of the licence or permit.

DRAFT FOR PUBLIC COMMENTS

SCHEDULE

(s.12)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The Board shall meet at least once in every four months in any financial year for the discharge of its business.
2. The quorum for the conduct of the business of the Board shall be five members.
3. Where the chairperson is absent, the members present shall elect one of their members to preside, and the person elected shall have all powers of the chairperson with respect to that meeting and the business conducted.
4. The chairperson of a meeting shall in the case of equality of votes have a second or casting vote.
5. The members shall cause minutes of all proceedings at their meetings, and of all proceedings at meetings of every committee that may be appointed by them, to be entered in books kept for that purpose.
6. The books containing the minutes of such proceedings shall remain the property of the Bank and shall be kept at such place as the directors think fit, and shall at all times be made available to the Cabinet Secretary and to all persons authorized by him in that behalf.
7. The Board may from time to time establish committees for the better carrying out of its functions.
8. The Board may co-opt into the membership of committees established under paragraph (5) a person whose knowledge and skills are necessary for the proper discharge of the functions of the Board.
9. A person who has been co-opted to attend and deliberate at a meeting of the Board shall not have a right to vote at the meeting.
10. The decisions of the Board shall be by concurrence of the members present but where concurrence is not achieved, decisions shall be by a majority of the members present and voting.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is establish the Kenya Development Bank that will facilitate the industrial and economic development of Kenya by initiating or aiding expansion of an industrial, commercial or other enterprises.

Part I (Clauses 1 to 3) of the Bill provides for the preliminary provisions of the Bill. It provides for the short title, interpretation and the exclusion of the application of section 3(c) of the Banking Act.

Part II (Clauses 4 to 16) of the Bill provides for the establishment of the Kenya Development Bank. It vests the management of the Bank in the Board and sets out its composition, functions and powers. It also provides for the Director-General and the Corporation Secretary of the Bank.

Part III (Clauses 17 to 21) of the Bill sets out the financial provisions.

Part IV (Clauses 22 to 25) of the Bill sets out the miscellaneous provisions. It provides for the winding up of the Bank, application of the Companies Act and the powers of the Cabinet Secretary to make Regulations.

Part V (Clauses 26 to 34) of the Bill sets out the repeals, transitional and saving provisions. It repeals the Industrial and Commercial Development Act (Cap. 445) and amends the Tourism Act, 2011 to repeal the establishment of the Tourism Finance Corporation. It also provides transitional and saving provisions relating to the assets, liabilities, staff and legal proceedings relating to the Industrial and Commercial Corporation the Tourism Finance Corporation and IDB Capital Limited.

FINANCIAL CONSIDERATIONS

The enactment of the proposed Bill may occasion additional expenditure of Public funds.

STATEMENT ON THE DELEGATION OF LEGISLATIVE POWERS AND LIMITATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Clause 25 of the Bill delegates the power to make regulations. It delegates this power to the Cabinet Secretary for the National Treasury, in consultation with the Board of the Bank for the better carrying into effect of the provisions of this Act. The Bill does it limit fundamental rights and freedoms.

STATEMENT ON WHETHER THE BILL CONCERNS COUNTY GOVERNMENTS

The Bill does not concern County Governments.

Dated the, 2020.

UKUR YATANI,
Cabinet Secretary,
The National Treasury and Planning.

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