REPUBLIC OF KENYA

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

STATE DEPARTMENT FOR INDUSTRIALIZATION

KENYA INVESTMENT POLICY

Faster Investment Growth for Sustainable Development

-2019-

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Acronyms & Abbreviations

ACPCA	-	African Caribbean Pacific Cotonou Agreement
BPO	-	Business Process Outsourcing
CIU	-	County Investment Unit
COMESA	-	Common Market for Eastern and Southern Africa
CSR	-	Corporate Social Responsibility
DDI	-	Domestic Direct Investment
EAC	-	East African Community
FDI	-	Foreign Direct Investment
GOK	-	Government of Kenya
IGAD	-	Inter-governmental Authority on Development
ILO	-	International Labor Organization
ITES	-	IT Enabled Services
KAM	-	Kenya Association of Manufacturers
KenInvest	-	Kenya Investment Authority, national Investment Promotion Agency (IPA)
KEPSA	-	Kenya Private Sector Alliance
KIP	-	Kenya Investment Policy
KRA	-	Kenya Revenue Authority
MNC	-	Multi-national Corporation
MoITC	-	Ministry of Industry, Trade and Cooperatives
MSME	-	Micro Small and Medium Enterprise
MTP	-	Medium Term Plan
NEMA	-	National Environmental Management Authority
NES	-	National Export Strategy
NIC	-	National Investment Council
IPA	-	Investment Promotion Agency
OOP	-	Office of the President
RTA	-	Regional Trade Agreements
SDGs	-	Sustainable Development Goals
SEZ	-	Special Economic Zones
SME	-	Small and Medium Enterprise
TRIMs	-	Trade-Related Investment Measures
UNCTAD	-	United Nations Conference on Trade and Development
VAT	-	Value Added Tax
WTO	-	World Trade Organization

Foreword

BY **HON. PETER G. MUNYA, MGH**
CABINET SECRETARY FOR MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

Policy certainty and stability are key determinants of investment flows and also the ability of a country to attract the targeted investors. Currently, Kenya does not have a single, comprehensive and harmonized policy to guide attraction, facilitation, retention, monitoring and evaluation of investments.

This Kenya Investment Policy seeks to anchor the role of private investment in economic development and define the respective roles of various national and county government agencies, and that of investors themselves and the private sector in general. It will also serve to codify the roles and responsibilities in investor management to ensure a streamlined and clear investment regime in a devolved context.

We have been motivated to produce the policy in response to challenges articulated by investors, and the need to strengthen the country's competitiveness and business climate. To achieve Kenya's Vision 2030 and Big 4 development objectives, it is important to have a clear, harmonized and a properly coordinated approach towards promotion and facilitation of investment. Such an approach should clarify the kind of development and industrialization culture that Kenya wishes to pursue, the role of government agencies (at the national and devolved levels) and their coordination and requisite capacity enhancement for effectiveness. It should also spell out the nature and structure of incentives, the role of strategic perspectives of the targeted investors and those already in Kenya in defining the investment promotion and facilitation approach, provision of the required infrastructure such as readily available production sites, and provision of a competitive and conducive business environment where basic regulations are effectively enforced. The ultimate objective is to position Kenya as a premier investment destination, a global leader in investment attraction and retention, by mobilizing private investment to support economic growth and sustainable development.

Drafting of the policy involved an intensive consultative process of both public and private sector stakeholders at both the national and county government levels. It also involved views of international development agencies and representatives of foreign chambers of commerce and industry.

I wish to thank and express my deepest appreciation to the Kenya Investment Authority as well as the Kenya Investment Policy Task Force, who worked tirelessly to produce the final report. I also express gratitude to our partners, the World Bank, the United Nations Conference on Trade and Development, the Common Market for Eastern and Southern Africa, and the International Institute for Sustainable Development for offering expert advice and facilitating the process.

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Preface

BY BETTY MAINA,
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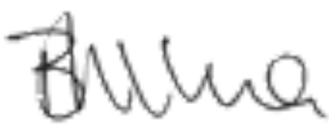
Increasing the level of investment, strengthening investor confidence and positioning the private sector as the engine of economic growth have been a long-term strategy of the Kenya Government as exemplified in various policy documents and development plans.

Kenya has prioritized education, infrastructure development and creation of a conducive investment climate to spur growth and job creation in all sectors of the economy. Heavy investments have been made in flagship projects and opportunities that include expansion of the Port of Mombasa, airports, transport corridors, rail links and Special Economic Zones to make Kenya a global economic and business hub. In the recent past, the Government has also adopted various legislation to make the economy more business friendly. These include the Companies Act, the Insolvency Act and the Special Economic Zones Act, the Business Registration Service, the Companies and Insolvency Legislation (Consequential Amendments) Act 2015 and Finance Act amendments 2015.

In order to realize the country's development aspirations in an environment of over 224 national and sub-national investment promotion agencies from 162 countries competing for investments from the same locations, there is need for all stakeholders who interface with investors in their day-to-day operations to restructure their approach to focus on effective facilitation of investments and provide adequate support to investment promotion and aftercare at all the levels of government. The Kenya Investment Policy seeks to harmonise investment operations and place the strategic perspectives and needs of investors at the centre of attention. This will necessitate review of all legislation pertaining to investment; streamlining the institutional framework, legislation, and procedures to enhance effectiveness and transparency; and improvement of the country's investment climate.

Adoption of the policy will result in the establishment and expansion of enterprises capable of providing increased employment opportunities and contributing substantially and sustainably to the widening of the economic base of the country.



Betty C. Maina, CBS

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Executive Summary

To achieve the twin targets of Kenya's Vision 2030 — 10% growth per annum and middle-income industrializing country status — and the immediate ones of the Big 4 Agenda, the Government of Kenya recognizes the critical role played by private investment. It has thus put measures in place to attract and retain foreign investment while encouraging the expansion of domestic investment, with the aim of increasing private investment to 24% of GDP by 2030.

Kenya has lacked a single and clearly defined policy solely focusing on investment generation and retention. However, the Government of Kenya has formulated various strategies and policies that focus on investment growth and support, stipulated in various policy documents such as National Development Plans, Sessional Papers and Master Plans, including the new Constitution 2010. These programs and initiatives have had suboptimal impact. They also led to the adoption of various fiscal and non-fiscal incentives, changes in investment-related regulations and the creation of several government agencies tasked with responsibility for investment promotion and facilitation, some with overlapping mandates leading to duplication of efforts and unnecessary strain on limited government resources.

To address the challenges related to the entry, treatment, performance and impact of private investment, the Government has developed this Kenya Investment Policy (KIP). The policy development process took a holistic approach to gain an understanding of Kenya's context as well as international best practices to inform the policy proposals. The KIP is guided by seven core principles, which emphasise the need for openness and transparency, inclusivity, sustainable development, economic diversification, domestic empowerment, global integration and investors' needs.

The KIP addresses private investment at the national and county levels to ensure seamless promotion and facilitation process, and policy and regulatory coherence. It is a comprehensive and harmonized policy to guide attraction, facilitation, retention, monitoring and evaluation of private investment. The KIP further recognizes the central role of Kenya's Constitution (2010) which clearly delineates the complementary roles that national and county governments play in investment promotion. The KIP also creates an institutional framework that fosters coordination for efficient investment attraction, facilitation and a favourable investment climate. The policy actions proposed in the KIP are designed to support and stimulate private sector development and improve the overall ease of doing business and competitiveness in the economy, with the ambition that Kenya becomes the premier destination for at least 50% of multinationals establishing their continental headquarters in Africa.

The KIP addresses some of the fundamental requirements for establishing a well-coordinated investment environment that will attract high-quality FDI into the country while upscaling the capacity of local small and medium-sized enterprises (SME). These include: placing investor perspective and needs at the vantage point; fostering a harmonized regulatory and institutional framework for investment; providing an active and effective investment promotion and facilitation government function, including adequate resourcing and capacity development; putting greater focus on investor targeting driven by the development and industrialization culture chosen for the country; building a critical mass of domestic investors, including strengthening their capacities; adopting a targeted approach to offering incentives by aligning them to the development culture and priorities; devoting significant resources to investor aftercare and increasing national savings.

These objectives are to be achieved through the implementation of critical measures stated by the KIP, including the following:

1. **Investment oversight**
   Operationalization of the National Investment Council (NIC), which will be responsible for formulating the country's overall investment strategy and providing oversight over the implementation of the KIP. It will also ensure effective decision making on critical investment issues which are essential for attraction of high impact investors and maximization of the developmental impact of investment, including approving bilateral investment treaties and investment-related chapters in treaties.

2. Investment promotion and facilitation
   The primary responsibility of investment promotion and facilitation falls on KenInvest. Counties, through County Investment Units, should play a major role by developing bankable projects, outlining their competitive positions, preparing marketing materials aligned to their areas of strategic focus, and providing

attractive business environments. Officials at the county level also play an important role in investment facilitation, including securing community approval, providing land where needed, and participating in investment promotion activities for specific investment projects in collaboration with KenInvest.

3. **Investment entry and establishment**
Various government agencies are involved at different levels along the investment entry and establishment process. KenInvest plays a facilitation role among these entities through a one-stop centre (OSC) to minimize the administrative burden on investors and government agencies.

4. **Investment retention and aftercare**
Counties play a major role in ensuring that investments located within their territory are given the highest level of attention and their concerns addressed. The Government is responsible for ensuring that the overall investment climate remains attractive to potential and existing investors. KenInvest is responsible for taking the lead to provide effective aftercare services by working with counties and national government actors. This support should contribute to enhanced profitability and readiness for expansion.

5. **Investment assessment**
Ensuring that investments are contributing to the country's economic, social and environment sustainability objectives is critical. Measuring investment impact with respect to employment, technology transfer, supplier linkages between investors and SMEs, other development objectives, and community engagement, among others, is a shared responsibility among the different actors. While the NIC will lead and provide oversight over this process by spearheading determination of the development and industrialization culture for Kenya, it will work closely with other national and county institutions to ensure that the country continues to target and attract beneficial investment. Incentives will be deployed towards achievement of this culture and impact.

6. **Establish land banks** which could be used for large projects, including encouraging counties to set up a savings scheme where a percentage of their budget allocation goes to purchase of land to be set aside for investment purposes.

Chapter 1:
BACKGROUND

1.1 INTRODUCTION

Private investment (domestic and foreign) is a major facilitating factor for economic growth and development. Investments create employment, increase capital, and bring in foreign exchange. Furthermore, foreign direct investment (FDI) can have additional positive impact by transferring technologies, establishing marketing and procuring networks for efficient production and sales internationally and, by training labour and enhancing management skills. The Government of Kenya recognizes this critical role and has put in place measures to attract and retain foreign investment while encouraging the expansion of domestic investment.

a) Investment policy background and development blueprints

Since independence, the Government of Kenya has formulated strategies and policies that focus on investment growth and support, stipulated in various policy documents such as National Development Plans, Sessional Papers and Master Plans. In 1964, the Foreign Investment Protection Act was passed to provide basic investor protection. This Act was enacted as a statutory guarantee to the protection of certain approved investments in the country.

In 1982, the Investment Advisory and Promotion Centre under the then Ministry of Finance was set up. It was later converted to the Investment Promotion Centre (IPC) in 1986 through the Investment Promotion Centre Act, Cap 485 of 1986, with the mandate of promoting private investments in Kenya by both local and foreign investors. The Act was amended in 1992 to empower IPC to issue a Certificate of General Authority to investments that have no policy, planning, security, health or environmental implication, and are not on the restricted list, viz mining, forest products, Manufacturing under Bond (MUB), Export Processing Zones, excisable goods, petroleum operations, tourism, ferries, insurance, banks, financial institutions and mortgages. In 2004, the Investment Promotion Act was enacted, seeking to improve investment promotion and facilitation. This Act transformed the IPC and created the Kenya Investment Authority, with an expanded mandate for investment promotion, investment facilitation and policy advocacy.

Sessional Paper No. 2 of 1997 on Industrial Transformation to The Year 2020 emphasized investment promotion as one of the most important strategies to achieve industrial transformation through the IPC.

The Economic Recovery Strategy for Wealth and Employment Creation (ERS) adopted in 2003 aimed to ensure that the public sector plays its regulatory and facilitator role for private investment. The ERS (2003-2007) targeted to achieve an 8% growth rate and industrial status for Kenya by 2025, creating 500,000 jobs a year in the process. The central focus of the Plan was job creation through sound macroeconomic policies, improved governance, efficient public service delivery, an enabling environment for the private sector to do business, and through public investments and policies that reduce the cost of doing business. The Plan also included an equity and social-economic agenda focusing on reducing inequalities in access to productive resources and basic goods and services.

More recently, the Government adopted the Kenya Vision 2030, which identified specific flagship projects and enablers aimed at setting the stage for a flourishing economy. The Vision in its First Mid-Term Plan (MTP) 2008-2012 emphasized the need for faster economic growth and provided avenues for investments and flagship projects for both foreign and domestic private investors, some of which were to be implemented through public-private partnership (PPP) arrangements. The second MTP built on the successes from the first MTP plan and aimed to accelerate economic growth to double digits in order to meet some of the challenges identified in the first MTP. The third MTP has been launched in line with the Big 4 Transformative Agenda for the period up to the end of 2022.

These programs and initiatives have resulted in increased levels of investment and GDP growth. They have also led to adoption of various fiscal and non-fiscal incentives, changes in investment-related regulations and creation of several government agencies tasked with responsibility of investment promotion and facilitation, some with overlapping mandates leading to duplication of efforts and unnecessary strain on limited government resources.

b) New Constitution and Devolution

In 2010, Kenya ratified a new constitution ushering in a governance structure of a devolved government which comprises of national and county levels. Article 6(1) of the Constitution provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. One of the objectives and principles of devolved government as per Article 174 (f) is to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. Schedule Four of the Constitution, in line with Article 186, states that the National Government, among other duties, is responsible for national economic policy and planning. Article 189 provides a cooperation mechanism for national and county governments to work together to achieve mutual goals for the development of the country and individual counties. This new structure also empowers counties to take an active role in cultivating economic development in their areas, including the ability to seek new investments, albeit in a coordinated manner with national government.

The advent of devolution has also created more investment promotion and facilitation institutions at the county and national levels. Proliferation of these institutions has complicated the promotion and facilitation process due to lack of coordination between national and county governments in matters relating to investment promotion and facilitation.

c) Current state of private investment

Kenya's private investment performance has been erratic and quite sensitive to large investment projects. Between 2012 and 2015, FDI inflows rose significantly and reached an annual average of close to US$1 billion. They then dropped to US$393 million in 2016 and recorded US$672 in 2017, largely due to a lengthy electoral process during that year. However, Kenya continues to be a top destination for FDI flows and was ranked third by project numbers among countries in the Middle East and Africa in the 2016 FDI Intelligence Report published by the Financial Times. FDI into Kenya by project numbers increased by 47%, reaching 84 announced projects, compared with increases in Ghana (21%), Nigeria (19%), Egypt (14%) and South Africa (3%). Likewise, Kenya ranked high as a source country for outward FDI. In particular, FDI out of Kenya by capital investment reached US$1 billion in 2015, placing it tenth in the Middle East and Africa region compared with the United Arab Emirates (US$21.8 billion), South Africa (US$2.5 billion), Mauritius (US$2.1 billion) and Egypt (US$1.7 billion).[1]

A key strength of the Kenyan economy is its diversified nature and FDI is also not restricted to one or two sectors. Manufacturing, real estate, energy, ICT and tourism have been key sectors attracting FDI and recently, oil and mining sector has joined this group.

Nevertheless, Kenya's FDI per capita is low compared with some of its neighbours, including Tanzania, Mozambique and the Democratic Republic of Congo. Furthermore, Kenya's FDI levels as a share of GDP was 0.8% in 2017 compared to 2.2% for Tanzania, 8.5% for Ghana and 4% for Rwanda, indicating potential for improvement. Given Kenya's economic activity, actual levels of private investment may be higher than reported. However, due to data collection challenges, official numbers may be inaccurately reflecting actual private investment, including FDI.

Similarly, Kenya's national savings rate, which stood at 10% of GDP in 2017, still lags behind similar sized countries in Africa, where it represented close to 15% of GDP in the same year.

1 The data on capital investment (cited from Financial Times Report) is based on the capital investment the company is making at the time of project announcement or opening, As companies can raise capital locally, phase their investment over a period of time and can channel their investment through other countries, this data is different from the official data on FDI flows.

To achieve its development objectives, Kenya must significantly increase private investment which will help create jobs, drive economic growth, and provide the government with the resources it needs for the wellbeing of her citizens. The extent to which these benefits will actually accrue depends heavily on the policies Kenya adopts, the rights and obligations agreed to in international treaties,

the policies and practices of investors, and the institutions available to support mutually beneficial arrangements. The government must therefore invest in improving Kenya's investment climate for both domestic and foreign investors. In this regard, harmonizing the efforts of the national and the county governments as well as other government institutions with a bearing on the investment climate will be crucial.

d) Focus of Kenya Investment Policy

The Kenya Investment Policy is a comprehensive and harmonized document to guide attraction, facilitation, retention, monitoring and evaluation of private investment both at the national and county levels. The KIP recognizes the central role of Kenya's Constitution (2010), which clearly delineates the complementary roles that national and county governments play in investment promotion. The KIP creates an institutional framework that fosters coordination for efficient investment attraction, facilitation, and a favourable investment climate. The KIP will also inform and influence where public investment is directed, as this it affects and incentivises private investment development and growth.

For the purpose of the KIP, any economic asset that an investor owns or controls, directly or indirectly, qualifies as an investment if it involves a commitment of capital or other resources, an expectation of gain or profit and the assumption of risk.

The KIP is guided by the country's Constitution, development aspirations and commitments as espoused in various policies and strategies as well as multilateral, regional and bilateral commitments. In addition, Kenya subscribes to the United Nations Sustainable Development Goals (SDGs) and Africa's Agenda 2063, designed to ensure that development activities are conducted with a long-term view towards sustainability and continued social development of her citizens.

e) Kenya Investment Policy formulation process

The KIP was formulated through a national and county consultative process managed by a three tier structure comprising of the Minister responsible for investment, the Inter-ministerial Task Force and the secretariat. The task force comprised of the following institutions: Ministry of Industry, Trade and Cooperatives (lead ministry); Office of the President; National Treasury and Planning; Kenya Law Reform Commission; Ministry of Devolution and ASALs; Ministry of Foreign Affairs; Ministry of Agriculture, Livestock and Fisheries; Office of The Attorney-General and The Department of Justice; Export Promotion Council (EPC); Export Processing Zones Authority (EPZA); Ministry of East African Community and Northern Corridor Development; Council of Governors; Ministry of Energy; Ministry of Petroleum and Mining, Kenya Private Sector Alliance; Kenya Chamber of Commerce and Industry; and KenInvest (secretariat).

1.2 VISION AND MISSION OF THE KENYA INVESTMENT POLICY

The vision:

For Kenya "To be the investment hub of choice with a vibrant economy".

The mission is:

"To attract, encourage and retain productive investments for sustainable and inclusive development by promoting and providing a thriving, dynamic and globally attractive investment climate."

1.3 POLICY TARGETS

The specific targets of the KIP are to:

1. Improve ease of doing business reforms to become a top 50 country in ease of doing business from 61 (2018) and achieve a distance to frontier score of 65 from 61.22 by the year 2020; Increase the level of public and private investment to at least 32% of the country's GDP by the year 2030 while increasing the level of private investment to 24% of GDP by the same year;
2. Promote domestic direct investment (DDI) to reach 20% per annum from the 2019 baseline; and
3. Become the premier destination for at least 50% of multinationals establishing their continental headquarters in Africa.

1.4 GUIDING PRINCIPLES

The Kenya Investment Policy is guided by a set of seven core principles:

i. Openness and transparency

Emphasizing the importance of transparency in the investment promotion and facilitation process in Kenya, including in identifying opportunities, designing and reviewing relevant legislation, and addressing pertinent issues related to investment entry, operations and exit.

ii. Inclusivity

Fostering a holistic approach to investment that encourages inclusive development, which engages county governments, local communities and relevant stakeholders.

iii. Sustainable development

Recognizing the need to promote investment that responsibly stewards the environment, encourages efficient resource utilization and enables the nation to achieve the objectives of Kenya Vision 2030, SDGs and Agenda 2063.

iv. Economic diversification

Considering the need to foster diversified economic activities and promote export-led growth through participation in higher value added regional and global value chains.

v. Domestic empowerment

Acknowledging the critical role played by domestic companies (including MSMEs) and underscoring the need to promote and enhance their competitiveness for integration into regional and global value chains through effective linkages and local sourcing.

vi. Global integration

Recognizing the benefits for Kenya from effective integration with other economies in the region and attracting high-quality FDI, including enhanced participation in regional value chains, playing a strategic regional hub role and fostering better access to regional and international markets.

vii. Investor needs

Appreciating the importance of investors as the vantage point of this policy and of the investment promotion and facilitation strategy, and taking measures to focus government actions on understanding the strategic perspectives, concerns and needs of investors.

Chapter 2:

RATIONALE

2.1 INCREASING THE NATIONAL SAVINGS RATE

Two of the most important issues in achieving the envisaged economic growth as a country are how to stimulate investment and increase the level of savings to fund the increased investment. Kenya's national savings as a percentage of GDP has fluctuated from 12.2 in the 1970s, to a record high of 37.3 in the 1990s and down to 11 currently. Policies and reforms that target to increase the efficiency of banking and other financial markets, including such initiatives as institutionalized savings or expansion of the financial infrastructure, can contribute immensely to the growth of national savings.

Kenya is committed to implementing innovative long-term policies that seek to raise and sustain national savings at 30% of GDP and to lower the cost of credit to the private sector. These policies will encompass initiatives that target product innovations, increased access, encouraging an increase in the number of players to improve competition, increased customers' choices, and strengthening of the financial system.

2.2 INCREASING DOMESTIC INVESTMENT

Domestic Direct Investment (DDI) plays an important role in economic development through the creation of employment opportunities, mobilization of domestic savings, poverty alleviation, fairer income distribution, regional development, training of workers and entrepreneurs, creation of an environment in which large firms flourish, contribution to export earnings, and local supply chain enhancement through FDI with respect to domestic value addition. A favourable legislative and regulatory framework, which specifies incentives for domestic investments, will help promote the development of MSMEs, including feeder industries for targeted FDI, for them to have the capacity to access the value chains of larger industries.

The government has taken steps to form an entrepreneurial development environment by introducing appropriate policy reforms and providing greater incentives for MSMEs. Some of these initiatives include: creation of the Micro Small Enterprises Authority, rollout of subsidized funds such as Uwezo, youth enterprise development fund, Kenya Industrial Estates fund, and the establishment of the Productivity Centre of Kenya (PCK) under the Ministry of Labour and Social Services in partnership with the Japan international cooperation agency (JICA). Another important initiative is the Subcontracting Partnership Exchange (SPX) program supported by UNIDO and undertaken by Kenya Investment Authority to link domestic enterprises to supply chains of large domestic or international companies. Furthermore, SPX aspires to increase the local content of major investment projects in the country. At the regional level, the East African Community (EAC) has initiated an Industrial Upgrading and Modernisation Programme that focuses on sustaining MSMEs' growth while addressing some of the constraints to private sector growth, including access to financial services and information, business environment and regulatory framework favourable for expanding private sector's productive activities.

2.3 ATTRACTING FOREIGN DIRECT INVESTMENT

The experience of industrialized countries and emerging economies highlights the importance of FDI in supporting economic growth and development. FDI can enhance a country's labour pool, contribute positively to local enterprise development, and help with technology transfers. Further, FDI's benefits can extend to the improvement of social and environmental conditions for the host country. Yet, these benefits do not accrue automatically. The linchpin for high levels of private investment, particularly FDI, includes an attractive investment climate underpinned by a stable macro-economic environment, a solid legal and regulatory framework, a strong institutional architecture to ensure fast decision making and enforcement of laws and regulations, as well as clearly identified investment opportunities.

Countries must therefore take a proactive approach to investment promotion, facilitation and aftercare, backed by solid national policies and regulations, and a commitment to improving the investment climate for foreign and domestic investors. With close to US$1.5 trillion in FDI flows worldwide, there is competition among countries to attract their fair share. Recent trends show that FDI flows have increasingly been directed towards developing and emerging economies. Encouragingly, research suggests that those economies, which adopt best practices in investor promotion, facilitation, aftercare and investment upgrading, can raise their level of private investment dramatically. A prerequisite to countries taking advantage of increasing FDI flows is a strong investment climate, which is based on an effective national investment policy.

2.4 BENCHMARKING AGAINST BEST PRACTICE

There are notable examples of countries where private investment, including FDI, played a critical role in industrialization and economic advancement. For instance, Hong Kong became an Asian powerhouse through a combination of a well-articulated FDI strategy and heavy focus on supporting SMEs and local entrepreneurs. The Malaysian experience serves as an instructive case in how to raise both foreign and domestic investment through a highly proactive strategy of working closely with multinationals to ensure that the benefits of FDI are indeed resulting in technology transfer, high-quality employment and local enterprise development. It has adopted an innovative local content plan that rewards companies through fiscal incentives for active engagement with local vendors. Singapore is another example which illustrates how countries with minimal FDI restrictions can foster a rich investment climate, while benefitting SMEs. Nicaragua's success at promoting and facilitating FDI is particularly relevant in showing how small countries can have outsized results as they adopt international best practices. Nicaragua made significant strides in attracting FDI by investing heavily in its investment and promotion efforts, while simultaneously taking major steps to improve its investment climate.

Closer to home, Rwanda is considered a champion in investment facilitation, ease of doing business reforms and skills attraction. Reforms in investment-related regulations have been extensive and have been carried out at a rapid pace, leading to a remarkable improvement in the business climate. Public administration has increasingly adopted a service-oriented and partnership attitude with the private sector. The Rwanda Development Board (RDB) has become a strong agency in investment facilitation in Africa. With respect to diversification and value chain development, Ethiopia has implemented successful reforms for the development of strategic sectors, such as textile and garments as well as meat, leather, leather products and agro-industry, mainly through FDI.

These countries undertook measures within a context of economic stability, responsive government and a political system cognizant of investors' challenges and committed to assertively addressing them. In addition, best practices and principles for the design and implementation of a national investment policy have been seen to include:

- A harmonized regulatory and institutional framework for investment;
- An overarching framework for the nation's development blueprint, such as Vision 2030, which allows investment-related activities to coalesce around national objectives, and promotes and facilitates national savings;
- Identification of potential constraints that may impede investment or contribute to a sub-optimal investment climate and addressing them by providing incentives, ready production sites, and other interventions;
- An effective investment promotion and facilitation government function, with active focus on attracting beneficial, high quality foreign investment; and on investor aftercare support;
- Importance of investment coordination, ideally through a "nodal" agency that can work with stakeholders across the investment spectrum, including national and subnational actors;
- Adequate resource allocations to ensure optimal policy implementation, that include fiscal resources, a skilled and private-sector oriented workforce, and political will at the highest levels;
- Clear and well-defined investment targets that are mapped to investor activities and measured against a rigorous monitoring and evaluation regime; and
- Building a critical mass of domestic investors, including strengthening their capacities.

Chapter 3:
SITUATION ANALYSIS

3.1 OVERVIEW OF INVESTMENT TRENDS

According to the 2016 Economic Survey, total investment (US$15.66 billion) accounted for 24.5% of Kenya's GDP in 2015 (with FDI amounting to US$620 million, i.e. about 1% of GDP). Although the share of SME investment contribution in DDI cannot be ascertained, the SME sector contributed to more than 80% of all the jobs created by the private sector in 2015. In 2016, FDI dropped to US$393 million before rebounding to US$672 million in 2017 (see UNCTAD World Investment Report 2018). This performance was below the average for the region. The East Africa average stood at annual average of US$7.8 billion for 2016 and 2017 while Ethiopia recorded an average of US$3.8 billion and Tanzania US$1.3 billion.

While the inflows into Kenya in 2016 and 2017 were lower than the annual average for 2012-2015, largely due to prolonged presidential elections, Kenya remains among the top destinations for FDI in Africa in terms of the number of projects attracted on an annual basis according to data from FDI Intelligence.

3.2 PAST AND EXISTING POLICY & LEGISLATIVE INITIATIVES

Since independence, Kenya has valued the role of private investment. Broadly, Kenya's policy and regulatory framework related to investment can be organized into three main types of instruments designed to encourage the expansion of local and foreign private investment: 1) Strategy documents; 2) Institutions; and 3) Legislation.

3.2.1. **Strategy documents**

The primary strategy document guiding Kenya's development blueprint is Vision 2030. This document sets forth a comprehensive strategy for the country to achieve middle-income status by the year 2030 through economic, social and political foundational pillars. The document also recognizes the importance of private investment and encourages its expansion. The target is to have at least 32% of the country's GDP driven by both private and public investment by 2030, and to have the private sector investment to rise to over 24% of GDP by that year.

3.2.2. **Institutions**

Kenya has created several institutions with a development focus. Vision 2030 introduced additional bodies which are also involved in investment promotion. The Constitution of Kenya (2010) envisaged a devolved system of government, the implementation of which saw the formation of additional promotion and facilitation institutions. Key institutions involved in investment-related activities include:

3.2.2.1. National Government Ministries

Government ministries have departments or parastatals which are involved in the business of investment promotion. Of special note is the Ministry of Foreign Affairs, The National Treasury and the Ministry of Industry, Trade and Cooperatives, which is heavily involved in facilitating investment promotion, contracts and agreements. Each ministry also has a role in promoting and facilitating investment directly related to their sector, including licensing.

3.2.2.2. County Governments

Following the introduction of devolution in the Constitution of Kenya (2010), the nation now has 47 counties which have been granted various powers, including the ability to engage in investment promotion and attraction activities. Counties are therefore at the forefront of promoting investment at the local level, and negotiating investment contracts and Memoranda of Understanding with private investors.

3.2.2.3. Export-Related and Special Economic Authorities

To stimulate investment and exports, the country has established economic zones that enjoy special incentives. In the early 1990s, the Export Promotion Zones Authority (EPZA) and the Export Promotion Council (EPC) were established as principal institutions that would lead economic growth through export promotion. While EPC was to promote Kenya exports, EPZA was mandated to promote export-oriented investments. Special incentives are provided to enterprises operating in Export Processing Zones under the Export Processing Zones Act. In 2015, the President signed into law the Special Economic Zones Act that set forth the Special Economic Zones Authority (SEZA) with the objective of promoting investment into the newly established zones.

3.2.2.4. Investment promotion agencies

Through the Investment Promotion Act (2004), an investment promotion agency (IPA) called Kenya Investment Authority (KenInvest) was created. KenInvest's current mandate is investment promotion and facilitation and works with potential and current investors to increase private investment. KenInvest has been domiciled in several parent ministries and is currently under the Ministry of Industry, Trade and Cooperatives (MOITC).

In addition to establishing KenInvest, Parliament also instituted the National Investment Council (NIC) as an advisory body. The main functions of the NIC are: 1) identifying areas of impediment to economic development and investment; (2) reviewing the economic environment and proposing incentives for investment; (3) monitoring industrial development; and (4) promoting cooperation between the public and the private sectors in the formulation and implementation of economic policy. This body has not been operationalized to date despite its critical role in investment promotion, facilitation and retention as well as its central role in creating an attractive investment climate.

In addition to the KenInvest at the national level, several counties are also considering creating their own county-focused IPAs or investment boards to promote investments within their county.

3.2.2.5. Vision 2030-related Special Authorities

The Vision 2030 Delivery Board, the Konza Technopolis Development Authority (KoTDA) and the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) Authorities are among such institutions.

3.2.2.6. Development-oriented Institutions

Several institutions have been created to support and finance investment, including the Industrial and Commercial Development Corporation (ICDC), Kenya Industrial Estates (KIE), the Industrial Development Bank (IDB), the Kenya Industrial Research and Development Institute (KIRDI) and the Agricultural Development Bank (ADB).

3.2.3. **Legislation**

The following laws and policies are directly related to investment in Kenya:

1. The Investment Promotion Act (2004);

1. The National Industrialization Policy 2011-2015;

2. The Companies Act (2015);

3. The Economic Processing Zones Act (2015);

4. The Ministry of Industrialization and Enterprise Development draft Strategic Plan (2013-2017);

5. The Special Economic Zones Act (2015);

6. The Kenya Industrialization Transformation Programme (2015).

Additionally, the following legislation provides the legal framework for the initiation, management and dissolution of investments:

1. **The Constitution of Kenya (2010)** promotes and protects private investments. Article 65 of the Constitution of Kenya (2010) restricts land ownership in Kenya. This opens opportunities for cooperation with county governments and local communities, especially to access freehold agricultural land by a foreign investor. Landholding by non-citizens is limited to a leasehold term not exceeding 99 years, and a corporate body is regarded as a citizen only if wholly-owned by one or more citizens. Where the subject land parcel is classified as community land (formerly Trust Land or Group Ranch), it is important that the prospective purchasers ascertain whether due process has been followed in making the decision to sell as required under the **Community Land Act, 2016.**

2. **The Investment Promotion Act Cap 485B** whose main objective is to promote and facilitate investment by assisting investors in obtaining licences necessary to invest and by providing other assistance and incentives. The Act classifies and defines local and foreign investors.

3. **The Foreign Investment Protection Act of 2012 (FIPA)** defines the rights of a foreign investor. It provides guarantees on capital repatriation, remittance of dividends and interest. Under the Act, foreign investors are free to convert and repatriate profits, including retained profits which have not been capitalized, after payment of the relevant taxes and the principal and interest associated with any debt. The Act also authorizes the issuance of investment certificates which confer certain incentives to investors who invest a minimum capital of US$100,000. Currently, these investment certificates include a provision for three work permits and automatic licensing for over 70 different types of licenses.

4. **The Competition Act No. 12 of 2010** makes important provisions that may guide investment arrangements. The Act prohibits restrictive trade practices that seek to either hinder or prevent the sale or supply or purchase of goods or services between persons engaged in the selling or buying of goods or services. Any practice or agreement that limits or restricts the terms and conditions of sale or supply or purchase between persons engaged in the selling or buying of goods or services is prohibited under the Act.

5. The national legal regime for the intellectual property rights is still developing. **The Intellectual Property Act 2001, the Trade Marks Act Cap 506, the Copyright Act 2001, the Seeds and Plant Varieties Act Cap 326** are some of the acts regulating the use and protection of intellectual property. These acts facilitate the transfer of technology, access to locally protected products/ technology as well as open market for locally produced and protected products.

6. **The Capital Market Act Cap 485A** establishes the Capital Markets Authority for the purpose of promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya.

7. **The Public Procurement and Disposal (Preference and Reservations) (Amendment) Regulations, 2013** under Regulation 35 provide that for purpose of ensuring sustainable

promotion of local entities, a public body procuring goods or services shall have in its tender documents a mandatory requirement as a preliminary evaluation criteria for all foreign bidders' participation in international tenders to source at least 40% of their supplies from citizen contractors prior to submitting a tender.

8. **The National Construction Authority Act No 41 of 2011** provides for the registration of local contractors and accreditation of firms incorporated outside Kenya (Section 17 and 18). **The National Construction Authority Regulations 2014**, under regulation 12, provides for the registration of foreign firms wherein the foreign firm must undertake in writing that it shall subcontract or enter into a joint venture with a local person or local firm for not less than 30%of the value of the contract work for which temporary registration is sought as well as commit to transfer technical skills not available locally.
9. **Regulation 16** provides that employees shall be competitively recruited from the local labour market while the recruitment of foreign technical or skilled workers shall only be done with the approval of the National Construction Authority when such skills are not available locally.
10. **The Insolvency Act 2015** provides a more enabling legal regime that transforms insolvency into a second chance for recovery to profitability.
11. **The Business Registration Service Act 2015** ensures effective administration of laws relating to incorporation, registration, operation and management of companies, partnerships and firms.
12. **Private Security Regulation Act** assented into law in 2016 seeks a 30% local equity threshold for foreign security companies that are registered in Kenya.
13. **Limited Liability Partnerships Act, No 42 of 2011(LLPs)**
14. **Partnerships Act, No 16 of 2012.**
15. **Land Act, 2012; and Land Laws (Amendment) Act, 2016**
16. **Public Private Partnerships Act 2013** provides for participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects of the government through concession or other contractual arrangements.
17. **Income Tax Act, 1973** provides for the charge, assessment and collection of income tax.
18. **Tax Procedures Act 2015** provides uniform procedures for consistency and efficiency in the administration of tax laws; facilitation of tax compliance by tax players and effective and efficient collection of tax.
19. **Employment Act 2007** defines fundamental rights of employees, provides basic conditions of employment, and regulates employment of children.
20. The issuance of work permits and passes is guided by Sections 34(3) (a-g), 36, 40, and 42 of the **Kenya Immigration and Citizenship Act, 2011,** Laws of Kenya and Regulations 20-24, 27(1-4), 30(1-7), 34 (1-3) and the Seventh Schedule of the Kenya Citizenship and Immigration Regulations, 2012.
21. **Public Finance Management (PFM) Act, 2012** sets out the fiscal responsibility to ensure that a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, including taking into account any tax reforms that may be made in the future.
22. **Value-Added Tax (VAT) Act 2013** details the Value Added Tax and any exemptions.
23. **Environmental Management and Coordination Act (Cap 387)** provides for establishment of the National Environment Management Authority (NEMA) to regulate all activities to ensure that they pose no adverse effects to the environment. All infrastructural development is regulated through Environmental Impact Assessment licensing. Operations of facilities is regulated through Annual environmental audits, waste disposal licences and waste discharge licences. Access and trade in biodiversity is also regulated by NEMA with an emphasis of ensuring benefit sharing with communities.

3.3 CHALLENGES AFFECTING THE INVESTMENT CLIMATE

3.3.1. Limited Coordination

The existence of a many institutions dealing with investment promotion and facilitation continues to confuse investors. The situation is worsened by weak coordination among these government institutions/departments, attributed to lack of an overarching coordination mechanism of all matters related to investment promotion and facilitation. Furthermore, the existing structure does not provide for an appropriate placement of the National Investment Promotion Agency within a cross cutting office as is the case in other African countries. In Rwanda for instance, the Rwanda Development Board (modelled along the Economic Development Board of Singapore) brings in all the institutions that promote the country and facilitate investment under one roof, with direct reporting to the President and the Cabinet. The KIP aims at consolidating the fragmented investment-related legislation by creating a framework that establishes a strong coordinating mechanism in the country.

3.3.2. Investment entry and establishment

The requirement for investment certificates and minimum capital under the Investment Promotion Act were meant to foster development, protect small domestic businesses in certain sensitive areas, promote skills and technology transfer to Kenyans and encourage use of local inputs. However, these provisions seem not to have achieved their goals, hence the need for a new regime to develop the same areas using a different, better coordinated approach.

Through the Investment Certificate, the country set a minimum capital requirement for any investor to qualify for investment incentives irrespective of the sector. Analysis from stakeholders found that this requirement is detrimental, especially to less capital-intensive sectors, including those benefitting from recent technological developments. New thinking and approaches, emphasizing targeted and methodical processes, are required to improve the investment climate and increase investment promotion, attraction and retention.

An additional consideration in investment entry for foreign investors who intend on bringing non-local staff, or for domestic investors who require non-local staff, is the administrative burden and uncertainty associated with securing work permits. Feedback from investors indicates a complex, expensive and time consuming process that can often delay investment entry as key staff members await their work permits. This negative perception adversely impacts the investment climate.

3.3.3. Lack of an adequate incentives framework

Kenya lacks a well-articulated framework to grant and monitor existing incentives in line with the country's development goals and desired culture. In addition, there is also the lack of a clear framework under which to evaluate special investor requests for incentives. As a result, potential investors with significant investment prospects have opted for other investment destinations due to the lengthy delays involved in seeking the necessary incentives.

3.3.4. Conflicting legislation

The current legislations[1] on investment contain provisions that conflict or blur clarity with regard to general requirements, procedures, licenses, responsible institutions and duration of processes and procedures. These provisions create an overlap of functions and requirements thus causing confusion and uncertainty for both the investors and the institutions that interface with investors. It is therefore imperative to harmonize these legislations. Furthermore, there is need to streamline functions to reflect the current constitutional dispensation and overall national and county development aspirations.

3.3.5. Investor aftercare and upgrading

Investors in Kenya have generally not received the proper aftercare they require, primarily due to a severely

1 For details of some of these legislations, see Annexure in 7.1

under-resourced investment promotion agency and a lack of clarity about the parties responsible for this role. Effective aftercare is one of the most cost-effective and efficient ways to increase private investment, as existing investors expand their operations. It is also an effective source of information to identify areas requiring action to further improve the investment climate.

3.3.6. Access to land, production sites and related community resistance

Another burden for potential investors in Kenya is related to accessing land and lack of adequate spaces (such as ready industrial parks and zones) for production. Often, the process has been hampered by heavy bureaucracy and uncertainty, as well as by community resistance to new investment projects due to inadequate consultations or political interference. Although investors are encouraged to proactively engage with local communities, a proper engagement mechanism needs to be put in place with the government taking the lead in negotiations for projects that require access to land. Land banking and development of requisite infrastructure in sites set aside for investment would speed up private investment.

3.3.7. Balancing DDI and FDI

Despite the high potential that FDI has for the country's development, there is need for a mechanism that ensures accrual of the benefits to domestic firms, including active efforts to promote domestic value addition and utilization of the country's natural resource reserves in ways that directly benefit the local community. To ensure that FDI is having the envisioned positive spill over effects and the intended positive impact on the country's development objectives, it is essential to foster an investment environment conducive to a vibrant local private sector.

In certain activities, DDI can be promoted by developing restrictions/negative list to FDI for certain sectors or subsectors of the economy. Alternatively, it can also be fostered by promoting effective linkages between local and foreign businesses. Such measures can help overcome or avoid negative social sentiments against foreign investors when they dominate economic activities.

The country's focus on growth as analysed and documented in Vision 2030 identifies potential DDI growth areas to include agri-business, tourism, ICT, light manufacturing and infrastructure. While FDI could play a role in those sectors, promoting linkages between foreign and domestic firms can enhance economic and social development and increase local content by strengthening local productive capacity and the efficiency of the domestic enterprises. Similarly, local content will ensure that within strategic sectors or vehicles where the industry structure involves numerous suppliers, domestic goods and services are drawn into the industry, providing an opportunity for local content to substitute domestic value-addition for imported inputs.

3.3.8. Lack of an effective FDI and DDI data collection mechanism

Measuring impact of private investment is important to policy makers. The government and indeed KenInvest face challenges regarding the collection and compilation of accurate and comprehensive DDI and FDI statistics, as investors are not required to provide investment data to the authorities(i.e. the central bank or the statistical agency through a survey-based approach as is the case in many countries). Timely and accurate data on investment is extremely essential to the process of macro-economic planning. Accurate information on source, scale and sector helps in developing strategies for investment targeting and policy development. This investment data should cover all investments into and from within the country, including those that go directly to the counties. There is also need to set up DDI and FDI data collection focal points.

Chapter 4:

POLICY FRAMEWORK

A country's business environment is measured by its economic stability and policy coherence, predictability, and the short lead time between the investment decision and actual implementation, including re-investment. Therefore, improving the regulatory framework for business, and addressing the coordination of promotion, facilitation and aftercare as well as resultant policy interventions become key prerequisites to increasing investment in Kenya to create jobs and other related benefits.

In line with Kenya's economic development priorities, the policy actions related to the KIP are designed to support and stimulate private sector development by attracting high value added and inclusive investment that contributes to the country's economic diversification and ultimately to sustainable development. These goals further recognize the devolved nature of government, the importance of domestic investors and role of small and medium enterprises in the overall investment landscape.

4.1. POLICY OBJECTIVES

Taking these considerations into account, the specific objectives of the Kenya Investment Policy are to:

i. Create an enabling investment climate;

ii. Enhance investment transparency and clarity for investors seeking to invest in Kenya;

iii. Establish an effective institutional framework that emphasizes the role of monitoring and coordination of investment-related policies, decisions and activities into a coherent structure to enable seamless coordination of investment issues, including data management, while defining the respective roles of various national and county government agencies;

iv. Maximize mobilization and utilization of domestic capacity by encouraging its inclusion in the value chain;

v. Assure coherence of national sectorial policy and to promote the development of Kenya's high-priority sectors;

vi. Advocate for investor rights and obligations; and

vii. Promote investment not only for economic growth as such, but for inclusive growth and sustainable development.

4.2. POLICY STRATEGIES

To realize these objectives, the strategies guiding the implementation of this policy include:

1. Improving the facilitation of foreign and domestic investment entry and establishment to enhance the country's competitiveness;
2. Outlining and specifying investor treatment and protection guarantees, as well as investor obligations to improve the quality of investment, bolster domestic law and enhance responsible investment;
3. Strengthening coordination of investment promotion and facilitation between investment actors at national and county levels;
4. Creating a harmonized institutional, legal and regulatory framework that supports a vibrant and attractive investment climate;

5. Developing an effective and strategic incentives framework for investment to ensure accrual of benefits from targeted investments;
6. Developing guidelines and bankable project profiles for targeted promotion and facilitation of priority sectors;
7. Providing for systematic benchmarking on the investment climate for informed reforms and policy initiatives.

Chapter 5:
POLICY INTERVENTION AREAS

5.1. INVESTMENT ENTRY AND ESTABLISHMENT

5.1.1. Notification, registration and establishment

Currently, investment entry and establishment is governed by a complex web of rules and requirements for investors. Starting a business in Kenya requires registering with multiple agencies, meeting various licensing requirements, is often dependent on sector, and dealing with both national and county regulatory requirements. This has created ambiguity and confusion regarding investor management leading to unnecessary delays. Investment related activities in Kenya remain under the oversight of the Ministry of Industry, Trade and Cooperatives, the National Treasury and other sectoral ministries, the Central Bank of Kenya (CBK), the Export Processing Zones Authority (EPZA), the Capital Markets Authority (CMA), and the Nairobi Securities Exchange (NSE). Other key institutions include the National Environment Management Authority for environmental certification and audit and the Communications Commission of Kenya on regulation of investments in the ICT sector.

Part of this complexity is introduced due to legitimate government requirements to collect information about investments, to ensure compliance with Kenya's laws and regulations, to protect public interest, and provide incentives. Nevertheless, these complexities can stifle investment.

There have been initiatives by government to address these challenges, including reforms undertaken under the Ease of Doing Business. These initiatives are expected to greatly improve the business environment in the areas of starting a business, dealing with construction permits, and paying taxes. Additional initiatives such as the introduction of the E-citizen official digital payment platform that enables Kenyan citizens, residents and visitors access and pay for government services online, the establishment of "Huduma Centres" providing citizens access to various public services and information through integrated technology platforms from one stop shop citizen service centres, and the implementation of Kenya's eRegulations platform, which provides user friendly information on business establishment and operation processes, will further improve investor entry.

These efforts have already seen improved service delivery, but, there some gaps persist such as:

i. Lack of investors notification register;

ii. Lack of coordinating mechanism for national and county government investment agencies;

iii. A single application window for investors to register a company digitally is currently unavailable;

iv. Low adherence to timelines in the approval process; and

v. Lack of an effective OSS to cater for investors.

Policy measures

To simplify the process of investor entry and establishment, the government is to:

1. Maintain an information management system and assign unique identification numbers for all companies and private investments (FDI and DDI) for data collection and monitoring;
2. Create a coordinating framework for national and county government agencies to share company

registration information and ease investment implementation;

3. Entrench into law the One-Stop Centre that will enable investors to receive essential services under one roof digitally and physically. The OSS provides both entry and facilitation services.

5.1.2. Minimum capital requirements

Minimum capital requirement is the share capital that must be deposited by investors/shareholders before starting business operations. The paid-in minimum capital is usually the amount that an entrepreneur needs to deposit in a commercial bank as stipulated by the Investment Promotion Act 2004. Currently, investors who wish to receive an investment certificate from KenInvest must commit to an investment of at least US$ 100,000 for foreign investors and Ksh1, 000,000 for local investors. It is not mandatory but provides for 71 licenses specified in the Second Schedule of the Investment Promotion Act and also entitles the company to three work permits for staff. This minimum capital requirement is imposed regardless of the sector the investor is seeking to enter. The rationale for the need for the minimum capital requirements is: 1) to maximize beneficial FDI and minimize its potential negative effects; 2) to give priority to national private sector development and to protect small national businesses in certain sensitive areas; and 3) to ensure that the entitlement to work permits for foreigners granted as an incentive to holders of Investment Certificates is not abused to illegitimately bring in foreign workers.

Research shows that the existence of a minimum capital requirement directly hinders business development and growth. These restrictions have become detrimental on legitimate and beneficial FDI, including being overly restrictive for low-capital sectors such as ICT and wholly inadequate for capital intensive requirements such as extractives. Further, the screening process before granting an investment certificate has increased the burden on KenInvest, introducing potential delays, while adding to investor uncertainty. The requirement to screen all FDI proposals is a measure that is better applied to determine the eligibility for incentives (for qualifying investors) rather than to decide on the entry of FDI. The legitimate concerns should be addressed in more targeted ways that do not negatively impact on FDI attraction with a more investor friendly approach.

Of the 189 economies studied in Doing Business 2014, 99 had no minimum capital requirements. Some economies never required firms to deposit money for incorporation, while 39 had eliminated minimum capital requirements in the past seven years. Armenia, Belarus, Bulgaria, Denmark, Kosovo, the Republic of Korea, the Kyrgyz Republic and the United Kingdom are among these economies that have cut or eliminated such requirements.

Policy measures

With respect to minimum capital requirements, the government is to:

1. Draw up a negative list of carefully defined activities where foreign investment is restricted to allow protection of national investors in sensitive areas. The list would be determined by the Cabinet upon the recommendation of the National Investment Council, and be reviewed periodically and applied flexibly so that growing businesses in restricted sectors would not be prevented from forming beneficial joint ventures with foreign partners.

2. Ensure foreign investment in all other activities is open without restriction. In particular, FDI will not be subject to compulsory Investment Certificates and minimum capital requirements, except by certain prescribed sector requirements set by various sectoral licensing regimes.

3. Establish clear conditions for obtaining an Investment Certificate and special incentives – for both domestic and foreign investments. The entitlement to a number of entry permits for foreign workers, in turn, shall be linked to the amounts invested on a sliding-scale basis and the nature of the investment.

5.1.3. Work permits

Work permits are required for all foreign nationals wishing to work in Kenya. The Citizenship and Immigration Act prohibits any person who is not a citizen of Kenya to engage in any employment, occupation, trade, business or profession without a valid work permit. This therefore requires that any such person(s) who intend to work in Kenya should, as a matter of law obtain a work permit. The issuance of work permits and passes is guided by: Sections 34(3) (a-g), 36, 40, and 42 of the Kenya Immigration and Citizenship Act, 2011, Laws of Kenya and Regulations 20-24, 27(1-4), 30(1-7), 34 (1-3) and the Seventh Schedule of the Kenya Citizenship and Immigration Regulations, 2012. In these laws, permits are categorized into classes: A,B,C,D,F,G,I,K, and M. Investors with an Investment Certificate are entitled to three work permits for management or technical staff and three entry permits for owners, shareholders and partners. Each of these permits qualifies for additional dependents' passes for each permit holder. Currently, eligibility for a work permit to an investor requires proof of sufficient capital investment of US$ 100,000 or its equivalent. However, this has been subject to abuse by investors.

In an effort to address the administrative delays related to issuance of permits, even though administrative timelines within which a work permit should be granted exist, the department of immigration has undertaken the following measures:

i. Established an Inter-Ministerial Entry Permit Determination Committee, which meets once a week to consider Applications for Entry Permits. The members are drawn from various stakeholders among them: Kenya Investment Authority, Office of the President, Ministry of East African Community & Northern Corridor Development, Labour and Social Protection, Ministry of Education, Ministry of Tourism, Ministry of Foreign Affairs, and the Department of Immigration.

ii. Application of permits is now done online.

iii. A dedicated desk officer at Immigration handling investment related permits and concerns, and an immigration officer stationed at the KenInvest OSS.

While the Immigration Act specifies that work permits can be granted to foreigners on condition that "employment will be of benefit to Kenya", the concept is not clearly defined by law. There are also no publicized guidelines as to how "benefit to Kenya" is to be understood. This increases the degree of discretion granted to the Committee and the level of uncertainty for investors. There is also an understudy programme susceptible to many problems ranging from the understudy leaving the company before being trained to replace the expatriate employee to lack of competence of the individual, or manoeuvring by the firms to avoid replacing the expatriate with the understudy. As the technology sector also flourishes in Kenya, many foreigners who seek to start businesses that are beneficial to Kenya and create employment in Kenya may not qualify due to the low capital requirements of the sector which may not allow them to meet the capital requirement to receive an Investment Certificate.

The ability to attract skilled labour into priority sectors will be of increasing importance. Kenya also recognizes the importance of members of the diaspora who are not Kenyan citizens but have acquired capital, skills and technology that they wish to invest in Kenya.

Policy measures

To allow investors to quickly access the labour they require for their investments, attract skilled labour in priority sectors and facilitate easier return of Kenyan diaspora who may not be citizens, the government is to:

1. Amend the Investment Promotion Act to implement a sliding scale system for entitlements of work permits to foreigners. This is to increase the number of key positions which investors are entitled to as the size of the investment increases. The number of work permits issued shall be proportional to the amount of capital invested.

2. Minimum capital required for entitlement to work permits for foreigners is per investor as opposed to per investment.

3. Develop a list of pre-determined skills actively sought, including favouring the development of skill-intensive but low-capital foreign investments in the services sector that require expatriate workers.

4. Replace the understudy programme with more flexible requirements for training schemes for local employees.
5. Make the process of receiving permanent residency automatic on application for the Kenyan diaspora.
6. Create a special class of work permits linked to priority sectors, activities or skills and which are also subject to fast tracking.
7. Increase the duration of the work permit to 3 years from the date of issuance, with the possibility of extension thereafter, and set up a monitoring mechanism to facilitate automatic renewals.
8. Introduce an automatic incentive of 5 permanent residency awarded every year to the owners/CEOs of economically impactful investments.
9. All companies issued with work permits to submit a yearly economic impact report of their investments in support of the number of permits issued and to be issued.
10. The number of permits associated with certain investments will be announced from time to time based on the investment priority to the country's development.

5.2. INVESTMENT PROTECTION AND GUARANTEES

Protection of investors in Kenya is governed primarily by the Kenya Constitution (2010) and the Foreign Investor Protection Act. These documents allow private enterprises to freely establish, acquire, and dispose of interest in business enterprises. Private property may be compulsorily acquired by the Government only for reasons pertaining to public safety or public interest, and with "payment of full compensation". The owner of the property also has a right of direct access to the High Court if he wishes to contest the legality of the expropriation or the amount of the compensation, or to enforce prompt payment of the compensation. Foreign investors also have the option of recourse to the International Centre for Settlement of Investment Disputes (ICSID), as Kenya is a member. Kenya is also a member of the Multilateral Investment Guarantee Agency (MIGA), which allows foreign investors to seek cover for currency transfer risks, expropriation, breach of contract or war and civil disturbance, and a member of Africa Trade Insurance Agency, that insures against commercial and non-commercial risks. Kenya has negotiated and signed bilateral investment treaties (BITs) with a number of countries which provide for protections and guarantees.

This section codifies the principles implicitly embedded in existing legislation and sets forth key principles for the creation of a robust dispute resolution mechanism.

5.2.1. **Closure and exit**

i. Closure of operations of investments shall not be in any way restricted and exit is allowed so long as outstanding tax and legal obligations are satisfied.

ii. Repatriation of capital and any gains accrued from the closure may be conducted freely, subject to Central Bank regulations.

5.2.2. **National treatment**

In general, foreign investors receive the same treatment as domestic investors once established in Kenya. The main deviation from national treatment is in terms of access to agricultural land, where foreigners may only lease land for 99 years as opposed to Kenyan citizens who may purchase land on a freehold basis. The government recognizes the trade-offs involved in specifically targeting Kenyan citizens for preferential treatment even though this practice is aligned with the government's goal of protecting and providing local Kenyans with opportunities for economic advancement. Moreover, the Kenyan government is committed to principles of fairness, transparency and openness. The need arises therefore to clearly outline situations where local investors may receive preferential treatment and situations where local and foreign investors receive equal treatment.

Policy measures

To provide for national treatment of foreign investors while recognizing necessary exceptions to this treatment to pursue of the country's development goals principles in a transparent and open manner, the government is to:

1. Treat all investors equally in like circumstances with respect to the management, operation and disposition of investments in Kenya. For greater clarity, "like circumstances" in this policy requires examination on a case-by-case basis of all the circumstances including:

    a. *Effects on the community*

    b. *Effects on the local, disadvantaged, regional or national environment*

    c. *Effects on the investment's sector*

    d. *Aim of measures concerned*

    e. *Regulatory process applied in relation to the measures concerned*

    f. *Other factors directly related to the investment or investor in relation to the measure concerned.*

2. Reserve the right to provide more favourable treatment to Kenyan citizens if this treatment is in accordance with domestic legislation enacted specifically to achieve national or subnational regional development goals such as:

    a. Protecting vulnerable populations including local traditionally disadvantaged investors, women, *youth and persons with disabilities;*

    b. *Encouraging the development of strategic sectors;*

    c. *Acting in the national interest with respect to security-related measures;*

    d. *Supporting the development of local SMEs.*

5.2.3. Convertibility and repatriation

The government accords to investors the right to repatriate the capital invested and investment returns, including related funds such as: proceeds from liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital; unspent salaries of the foreign staff of the investor, and payments for maintaining or developing investment projects such as funds for acquiring raw or auxiliary materials, semi-finished products as well as replacing capital assets. It allows these transfers to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer subject to prevailing Central Bank regulations.

Policy measures

The government:

1. Maintains the right to make exceptions to repatriation in the event the country is experiencing balance of payments difficulties, sudden and massive outflows or inflows of capital, or experiencing serious macro-economic crises;

2. May develop a framework to curb against transfer pricing abuses including negotiating, where applicable, taxation agreements with foreign governments and cooperation agreements for sharing of information.

5.2.4. Expropriation

The Kenya Constitution (2010) prohibits expropriation without compensation. BITs signed also protect investors from undue expropriation.

Policy measures

The government:

1. Shall not take any measures depriving an investor of an investment unless all the following conditions are complied with:

    a. *The measures are taken in the public or national interest and in accordance with the law;*

    b. *The measures are not discriminatory;*

    c. *Provisions for the payment of adequate and effective compensation accompany the measures;*

    d. *Requiring due process of law.*

2. Provides compensation, in the event of expropriation, based on the fair market value of the investments affected immediately before the measure became public knowledge. The Investor affected by the expropriation has a right under the law of Kenya to a review of applicable cases and the valuation of applicable investments in accordance with the principles set out in this policy.

3. Excludes as expropriation non-discriminatory good-faith regulations related to public health, safety, protection of the environment or to the public interest.

5.2.5. Dispute prevention and resolution

Kenya has several dispute resolution mechanisms in place and participates in international dispute resolution forums including both UNCITRAL and ICSID. Article 159 of the Constitution of Kenya 2010 mandates the Judiciary to promote alternative mechanisms of alternative dispute resolution (ADR) in the administration of justice. This is further given effect by the Civil Procedure Act (Chapter 21 of the Laws of Kenya). The Nairobi Centre for International Arbitration Act 2013 also provides for the establishment of a regional centre for international commercial arbitration and an arbitral court that provides for mechanism for alternative dispute resolution and for related purposes.

The coming into force of the Mediation Rules 2015 made under the Civil Procedure Act on 4th April 2016, marked the beginning of the Court mandated mediation being implemented in the Commercial and Family Divisions of the High Court at Milimani Law Courts, offering appropriate, faster and cost-effective way of settling disputes. The mediation process is to be concluded within 60 days and may be extended by a maximum of 10 days from date of referral to mediation.

Policy measures

Recognizing that dispute prevention is a less costly and often more effective way of addressing investment disputes, the government is to:

1. Establish an early alert and tracking mechanism designed to identify and track at-risk investments and;

2. Initiate immediate problem solving, working closely with investors and relevant parties to resolve potential issues.

3. Establish a business ombudsman specifically for investors, within the National Investment Council, who shall receive formal dispute notices and initiate a dispute resolution plan among both parties, to facilitate settlement of arising investment disputes in a speedy, efficient and effective manner.

4. Establish a disputes settlement mechanism between an Investor and the State as follows:

    i. *Disputes between the State and a foreign Investor relating to an Investment of the latter in the Area of the former, shall, if possible, be settled amicably.*

    ii. *If the dispute cannot be settled amicably through negotiations within 60 days, the disputing parties shall seek to resolve the dispute through recourse to conciliation or mediation. The conciliator or mediator shall be appointed by mutual agreement of the disputing parties. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the conciliator or mediator.*

    iii. *If the dispute cannot be settled according to the provisions of paragraphs (1) and (2) within a period of three months from the date on which either party to the dispute initially requested amicable settlement, the Investor party to the dispute may submit it to the local courts of the Kenya.*

    iv. *If the local courts have not settled the dispute within a period of 12 months from the date of submission to the claim, the Investor party to the dispute may choose to submit it for resolution:*

        a) in accordance with any applicable, previously agreed dispute settlement procedure between the disputing parties; or

        b) to international arbitration, subject to the disputing contracting party's consent in the specific case, this does not affect consent given in IIAs .

    v. *The disputing parties shall jointly select one of the following arbitration mechanisms:*

        a) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

        b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL").

    vi. *A tribunal established under paragraphs IV and V shall decide the issues in dispute in accordance with applicable rules and principles of international law.*

    vii. *The award of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute.*

5.3. RESPONSIBLE INVESTMENT

Kenya's economic development goals are to realize broad based, sustainable and inclusive economic growth and returns for both businesses and Kenyan citizens. Presently investor obligations are found in various laws and legislations. However, some are not explicit. To meet the objectives of national development in a sustainable manner, it is important to promote sustainable development, the respect of human rights by investors, environmental protection, and combat corruption among others. The objective is to ensure responsible investment conduct by influencing investor behaviour by clearly articulating investor obligations. The obligations are intended to create a better balance in investment treaties and guarantees, bolster domestic law, and address gaps and weaknesses in domestic and international law while holding investors and investments accountable.

Policy measures

1. The Kenyan Government expects all businesses and investors, domestic and foreign operating in Kenya, to maintain appropriate minimum standards of corporate behaviour. The government requires investors and investments to comply with all local and international laws, regulations, administrative guidelines and policies with regards to: tax administration, corruption and bribery, human rights, labour, environmental protection, and corporate social responsibility, among others. In addition, investors shall have specific obligations regarding the government's special policy objectives regarding: domestic value addition, promotion of SMEs, and local input sourcing.

2. Businesses and investors are expected to understand Kenya's regulatory environment and abide by all relevant requirements. Some of the obligations of which foreign investors should be aware are outlined below.

5.3.1. Legal compliance

The government requires that investors and investments comply with all laws, regulations, administrative guidelines and policies of Kenya concerning the establishment, acquisition, management, operation and disposition of investments. It also requires that Investors are responsible for complying with payment of taxes due in accordance with the letter and spirit of the law. In addition, investors are obligated to comply with:

i. *national and county laws and regulations and relevant international standards,*

ii. *anti-corruption and anti-bribery obligations, and*

iii. *minimum standards of corporate governance and responsible business conduct.*

These obligations are binding in nature and are based on national laws unless there is a commonly accepted higher international standard, based on international best practice, in which case, the obligations should meet the international standard. These obligations should be enforced through national mechanisms of both Kenya and in some areas in the home state of foreign investors as well.

5.3.2. Common obligations against corruption

Kenya strives and commits to doing business with integrity. This policy acknowledges that corruption undermines Kenya's efforts to end poverty, promote development and prosperity. This requires avoiding corruption in any form, including bribery, and complying with the anti-corruption laws of the country. In line with this, the passing of the Kenya Bribery Act 2016 is a significant demonstration of Kenya's forward-thinking stance on corruption and its desire to open up the region to foreign and local investment. The Act provides a more robust system for preventing bribery, including obligations on individuals holding positions of authority in Kenya or companies operating in Kenya to report instances of bribery and obligations on companies to put in place bribery prevention policies and measures.

Policy measures

The government is to:

1. Actively campaign against corruption by establishing a mechanism to report corruption by investors to KenInvest and anti-corruption agencies for punitive action.

2. Establish a mechanism to investigate corruption claims from investors and companies for any party participating in corruption in any form, including bribery, and provide clear punitive guidelines for all parties found guilty.

3. Ensure adequate whistle-blower protection in line with domestic and international instruments.

The investor shall:

1. Comply with the nation's laws against corruption including the Kenya Bribery Act 2016 including establishing mechanisms to prevent bribery and corruption and to meet with reporting requirements.
2. Report all cases of attempted or actual corruption to KenInvest for information and the established ethics and anti-corruption agency for action.

5.3.3. Minimum standards for human rights and labour

The Constitution of Kenya (2010) establishes the Bill of Rights as an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. It recognizes and protects human rights and fundamental freedoms in Kenya to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all Kenyans.

Policy measures

Investors and businesses are required to familiarize themselves with Bill of Rights and other applicable labour laws and must:

1. Act in accordance with the Kenya Constitution and applicable national legislation governing labour and human rights.
2. Respect human rights throughout all aspects of their operations;
3. Act to protect against human rights abuses;
4. Ensure that they do not interfere with the human rights of others and address any negative impacts of their business activities on human rights;
5. Investors and their investments must respect human rights in the workplace and in the counties and communities in which they are located.

The government must:

1. Require that Investors and their investments act in accordance with applicable national legislation governing labour and human rights;
2. Require that all business enterprises domiciled in Kenya must respect human rights throughout all aspects of their operations;
3. Act to protect against human rights abuses;
4. Ensure victims of abuse have access to effective remedy and grievance mechanisms
5. Ensure that there are repercussions on Investors who violate human rights;
6. Enhance coordination between national and subnational investment promotion organs and labour department to ensure that workers' rights are being protected;
7. Ensure that investment is not encouraged by lowering core labour standards.

5.3.4. Domestic value added

The Vision 2030 national blueprint aims to transform Kenya into a newly industrialized, middle-income country providing a high quality of life to all its citizens by 2030. Developing linkages between investors and domestic firms and employees is a key pillar to enable skills and technology transfers, upgrading domestic enterprises, job creation, improving business and management practices, and facilitating access to finance and markets. These linkages are key foundations for robust industrial and economic development for Kenya. Strong linkages can also promote production efficiency, productivity growth, technological and managerial capabilities and market diversification in local firms.

The areas of focus are within the four main types of business linkages that occur between TNCs and suppliers (known as backward linkages); technology partners; customers (known as forward linkages); and those that result because from a spillover effect.

The government has attempted to address the need to increase and improve the linkages and local content through the 2016 Kenya local content bill, which provides for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources. It provides a framework to increase the local value capture along the value chain in the exploration of gas, oil and other mineral resources; and for connected purposes.

Policy measures

Recognizing that effective policies can help spur sustainable and inclusive economic development while engaging investors as partners, the government:

1. May develop specific sectoral laws and regulations to guide local content and participation. The Local Content Bill 2016 for the extractives industry sector is one such regulation.
2. Shall put in place policies, frameworks, incentives and regulations focused on increasing domestic participation on various supply chains and increased domestic value addition including local training enhancement and development, technology transfer, enhancing the domestic industrial base, employment generation, and increase in ownership. These will be cognizant of Kenya's international and domestic legal commitments. These measures are expected to;
    a. *Improve the policy environment in which the private sector operates to enable the creation of linkages between foreign affiliates and SMEs.*
    b. *Motivate, through linkage promoters, foreign affiliates to establish more and deeper sustainable business linkages.*
    c. *Upgrade SMEs to meet foreign affiliate requirements, benefiting from their coaching and mentoring programmes, and the strengthened capacity of local BDS providers.*
3. Promote FDI local content uptake by encouraging backward and forward linkages in various value chains to grow the SMEs capacity and productivity as they transition to medium and large companies.
4. Incentivize foreign and domestic investors, including those seeking investment certificates to develop and provide domestic value added strategy that addresses how they intend to increase local employment, provide training, enhance domestic procurement, provide technology transfer, and encourage enterprise development.
5. Measure the effectiveness of any local content legislation and measure its impact with respect to benefitting local communities.

5.3.5. Environmental protection

Kenya is endowed with some of the world's richest natural resources and ecosystems. The Government is committed to sustainable development without destruction of the natural resources base. This is evident in the country's commitments to sustainable environmental management demonstrated through various initiatives including those contained in the various National Development Plans. The primary legal framework for environmental management and governance in Kenya is contained in:

i. Environment Management and Co-ordination Act, 1999 which recognizes the right of every person to a clean and healthy environment and provides every person locus standi to institute a case for any environmental rights violation.

ii. The Constitution of Kenya (2010) which elevated environmental rights and environmental issues generally to constitutional status under the Bill of rights. Article 69 of the Constitution sets out certain obligations of both the state and persons with respect to the environment. It places an obligation on the state to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits,

iii. encourage public participation in the management, protection and conservation of the environment; establish systems of environmental impact assessment, environmental audit and monitoring of the environment, eliminate processes and activities that are likely to endanger the environment, and utilize the environment and natural resources for the benefit of the people of Kenya.

iv. The Climate Change Act 2016 allows the responsible Cabinet Secretary and relevant State Departments, impose obligations related to climate change on private entities.

v. The Kenya National Environment Policy 2013 provides a framework for an integrated approach to sustainable management of Kenya's environment and natural resources and integrates environmental management with economic growth, poverty reduction and improving livelihoods.

Policy measures

While seeking to attract investment, Kenya recognizes the need to ensure adequate environmental protection.

1. The government of Kenya shall not encourage investment by relaxing or waiving domestic environmental legislation in line with the national constitution and regional agreements that Kenya is party to.

2. Investors and business shall comply with applicable laws and regulations, in performing their business and investments activities, protect the environment and where the activity causes damage to the environment, the government shall mandate that investors restore it to the extent appropriate and feasible, and ensure fair compensation is paid to those impacted by the environmental damages.

3. Investors and business shall seek to leverage and apply green or sustainable technologies wherever possible to reduce the carbon footprints of their investments and other detrimental environmental impact.

5.3.6. Corporate social responsibility

Responsible investment and business practices require that investors should act with due care, skill and diligence, in line with professional norms and standards of behaviour, act in good faith in the interests of their beneficiaries and clients, including avoiding conflicts of interest, or where such conflicts are unavoidable, to balance and disclose such conflicts and to take account of environmental, social and governance (ESG) issues, in their investment processes and decision making, encourage high standards in the companies or other entities in which they ^have invested, and contribute positively to the communities they do business in.

Policy measures

The government understands the importance of good corporate citizenship to sustain a healthy relationship between business and our citizenry and:

1. Encourages companies to develop and integrate CSR practices into their core business activities that meet international acceptable standards.

2. Encourage investors to contribute to human capital formation, local capacity building in close cooperation with local communities, create high-quality employment opportunities and facilitate relevant training and professional development for communities, and encourage the transfer of technology to local suppliers.

5.4. INVESTMENT PROMOTION AND FACILITATION

Currently, the investment promotion and facilitation initiatives are administered through numerous policies, regulations and legislations cutting across several sectors of the economy. This has created ambiguity and confusion regarding handling of investors leading to unnecessary delays. Kenya's institutional and legislative framework governing investment is found in the Investment Promotion Act (IPA) of 2004. The Act aims at promotion and facilitation of investment by assisting investors in obtaining the licenses necessary to invest,and providing other assistance and incentives for related purposes. The Investment Promotion and facilitation is made more difficult by the fact that investors in Kenya face numerous challenges and obstacles, such as inadequate access to investor services, inadequate information and cumbersome manual and duplicative procedures.

The policy recognizes that various departments and agencies (EPZA, SEZA, Brand Kenya, EPC, KTB, NEMA, Immigration, KRA, KPLC, CAK, NCA, NLC, Registrar of companies) also interface with investors; it further considers the new constitutional dispensation creating the national and county levels of government, where there is a continuous development of laws, within counties such as (Machakos, Nyeri, and Mombasa) as they develop subnational investment promotion frameworks. The policy also acknowledges current provisions in the Export Processing Zones Act, Special Economic Zones act, State Corporations Act, Tourism Act (2011), Companies Act (2015), Regulations on Taxes, Immigration Act, Kenya Citizenship and Immigration Act (2011), Environmental Management and Coordination (Amendment) Act (2015), Competition Act (2010), National Land Commission Act (2012), National Construction Authority Act (2011), Energy Act (2006) encompass promotion and facilitation functions.

The foregoing necessitates purposeful, coordinated, synergised, targeted, strategic and comprehensive framework encompassing all relevant stakeholders in attracting, facilitating and retaining high quality and sustainable investment. Combined with a world-class approach to handling and responding to investor inquiries, countries can sway potential investors in the site selection process to choose their countries.

A key part of investment promotion is obtaining follow-on investment from existing investors. This process is usually a result of diligent aftercare efforts that are aligned with supporting existing investors and continued improvement of the investment climate. With respect to measures that have been undertaken to support facilitation, there is a digital platform under the e-citizen platform. There also exists a OSC that brings together all sector regulators to help fast track approval and licensing needs thus shortening project implementation period.

5.4.1. Investment promotion

To increase both the share of FDI and DDI that the country benefits from and align the country's promotion activities with international best practice in this area, the government will consider the following :

Policy measures

1. Amend the Investment Promotion Act (2004) and align it to the new constitutional dispensation and Kenya's obligation under treaties or conventions that have been ratified.
2. Operationalize the National Investment Council.
3. Formulate framework legislation, guidelines and stakeholder engagement for seamless coordination of investment promotion and facilitation and to ensure investor targeting and support to meet priority objectives.
4. Align national and subnational investment promotion strategies as part of the investment promotion process.
5. Provide sufficient budgetary resources for investment promotion and facilitation considering the critical role of private investment in wealth and employment creation.
6. Embrace ICT and develop a digital platform to enhance investment information sharing.

5.4.2. Investment facilitation

To streamline the investment process from entry to project implementation and operationalization, the government has established a One-Stop Centre that enables investors to receive essential services under one roof digitally and physically, with continuous process mapping and simplification efforts. Appropriate channels are identified to help with coordination of provision of essential services offered to the relevant county government departments.

Policy measures

To improve investment facilitation, the government is to:

1. Develop a national Customer Relationship Management (CRM) system that will be shared between national and subnational governments.
2. Strengthen investor services both at pre-establishment and post-establishment stages.
3. Constitute a land committee comprised of relevant institutions to handle investment related matters from inception of the project to dispute resolution where it may arise. They should take cognisance of the fact that land is an economic resource that should be managed productively, and is a finite resource that should be utilised sustainably.
4. Establish land banks in line with the Land Act, 2012 and subject to Article 65 of the Constitution, which could be used for large investment projects. This may include encouraging counties to establish a forced savings scheme where a percentage part of their budget allocation goes to purchasing land to be set aside for investment purposes. A mechanism will be developed to review the adequacy of the land bank and other investment constraints pertaining to land.

5.4.3. Aftercare, retention and advocacy

Recognizing the importance of proper investor aftercare to retain investors, and the role that it plays in keeping investors and upgrading investments, the government is to take:

Policy measures

1. Provide aftercare support and services to investors covering post-establishment facilitation services through to development support aimed at retaining investment, encouraging follow-on investment and achieving greater local economic impact. KenInvest aftercare services shall consist of the following activities organized into three categories:
    a. *Administrative – KenInvest shall offer investors administrative services such as assistance in obtaining appropriate visas, work permits and associate dependents' passes, and special passes. KenInvest may also work with third parties to provide additional services such as licensing approvals, coordination with government authorities on investment-related issues and country acclimatization services such as finding schools.*
    b. *Operational – KenInvest and or the County Investment Units may offer operational services to investors which include, but are not limited to, finding commercial space, staff recruitment, training, identification of local suppliers, and developing collaborations between local institutions and investors to increase and enhance productive capacity, skills and technology transfers and increasing high-quality employment.*
    c. *Strategic - KenInvest and the County Investment Units shall work with national and county governments, private sector associations, and other relevant parties to improve the long-term investment climate for investors, assist in development of investors' R&D capacity, and providing services that support local firms' development into world-class institutions.*
2. Establish clear quantitative and qualitative targets for the retention of high-quality investments.

3. Provide for the continual evaluation of the quality of investor support by both national and county governments.

4. Undertake strong advocacy role to improve investment climate based on its ongoing evaluation of the investment climate. An annual State of Investment report shall be published.

5.4.4. Green investment

The sustainable development agenda has intensified the debate at national and international level on the need for collective action on climate change. Discussions have been ongoing around green investments in various fora including at the UN climate summit (COP21), UNCTAD 14 Summit in Nairobi, and the Addis Ababa Action Agenda focusing on the need to align investments to the Sustainable Development Goals. 2016 saw the G20 Green Finance Study Group and the Financial Stability Board's (FSB) industry-led disclosure task force report on climate-related financial risks. The National Treasury and Planning also launched discussions and a draft Policy on Climate Change Financing. In 2016, The Climate Change Act was passed which allows government to impose obligations related to climate change on private entities. Together, these initiatives indicate the growing importance policy makers now place on governments and the business community's contribution to the global climate agenda.

Policy measures

To increase green investment, the government is to, where feasible and appropriate:

1. Develop a blueprint for concerted action towards climate change mitigation through green investments;

2. Align and harmonize other policy options and strategies of government geared towards climate change specific to green investment generation and finance;

3. Provide market incentives for low-carbon, climate-resilient investment to steer investments over time to least-cost mitigation options;

4. Establish open and competitive markets for green investment including in green technologies and infrastructure.

5.5. INCENTIVES FRAMEWORK

Kenya has put in place a simple, globally competitive tax regime for investment and incentives (fiscal and non-fiscal) are currently provided across a wide array of sectors. Some examples include tax incentives to foreign firms that manufacture goods locally for export, including a 10-year corporate income tax holiday and a 10-year withholding tax holiday on repatriated dividends and other remittances. Foreign investors are also exempted from paying value added tax (VAT), import duty on inputs, and payment of stamp duty on legal instruments. Investors qualify for 100% tax deduction on new capital investments. These incentives are managed within the National Treasury and Planning. Presently National Treasury and Planning, which is responsible for public finance management, consults with Kenya Revenue Authority, whose mandate is revenue collection and enforcement of compliance to taxation laws and regulations, to approve investor requests for fiscal incentives. These are then captured in the respective annual Finance Bills.

However, tax incentives are often introduced through lobbying and in an ad hoc manner by sectors/ministries, departments and agencies during sector budgetary hearings, and are rarely subject to proper cost-benefit analysis or reviewed ex-post to assess their impact vis-à-vis the purpose for which they were introduced. There is also lack of empirical studies to ascertain outcomes of existing investment incentive schemes more broadly.

Policy measures

Recognizing the importance of incentives in attracting some types of investment, while understanding the drawbacks to fiscal-only incentives, the government is to:

1. Utilize evidence based tax incentives to avoid unnecessary erosion of the tax base through tax incentives, by undertaking research to ascertain empirical outcomes of existing incentives.
2. Conduct a periodic review of tax incentives to ensure relevance and effectiveness.
3. Review the current incentive regime to identify the possibility of streamlining existing incentives and favouring or a more competitive corporate income tax rate for all.
4. Through KenInvest, publish a periodic investor related tax incentives manual for information sharing purposes.
5. Develop and implement national policies that incentivize investors in developing human capacity of the domestic labour force. They may include incentives to encourage employers to invest in training, capacity building and knowledge transfer, paying attention to the special needs for youth, women and other vulnerable groups.
6. The county governments will provide incentives in line with the Constitution.

5.5.1. Types of incentives

Types of incentives offered may include but are not limited to the following:

1. Fiscal incentives such as reinvestment allowances, investment tax credits, accelerated depreciation and duty exemption. All fiscal incentives must:
   a. *Have an equivalent or greater offsetting positive economic impact through job creation, enterprise development, training credits, etc.*
   b. *Be evaluated on a regular basis for efficacy.*
2. Non-fiscal incentives such as special consideration on visa issuance, specific permitting, facilitation and access to land.
3. Hybrid incentives such as government guarantees that may involve fiscal or non-fiscal measures.
4. Performance-based incentives that are based on actual results achieved.
5. Develop discretionary vs. non-discretionary incentives.

5.5.2. Incentive criteria

All incentives offered should meet the following criteria:

1. Be consistent with the government's sustainable development priorities and investment strategy,
2. Be consistent with the spirit and letter of the Constitution,
3. Be limited to sectors that the government has identified as priority sectors under its current or revised development plans,
4. Be offered only to investments that meet the following criteria:
   a. *Incur significant benefit to nationals in terms of job creation, technology transfer, skills development, and productivity improvement,*

b. Be consistent with the type of investment and investor preference. For example, government incentives may include infrastructure improvements that benefit the larger community and may not include a direct fiscal component to the investor,

5. Standard incentives should be non-discriminatory and time-bound; once the incentive period has lapsed, investors should fall under the general tax regime.

5.5.3. Obtaining incentives

As much as possible, the government shall provide incentives to investors on an automatic and non-discretionary basis once investors meet defined criteria.

For investors to obtain standard incentives, the government may:

1. Require that investors meet certain minimum capital requirements based on sector, company ability, and size of investment,
2. Require that investors submit a domestic value added plan in connection with their application for a specific incentive. If the government mandates a domestic value added plan in connection with a particular incentive, it shall also be required to publish the criteria against which it shall evaluate the domestic value added plan for approval,
3. Grant incentives conditionally based on on-going performance evaluations and criteria so long as such criteria and stated outcomes are communicated to investor at the time of incentive approval,
4. To simplify the process of obtaining investment incentives, the government shall:
    a. Publish all available incentives in the country's investment promotion material including websites along with objective and stated criteria to receive specific incentives,

    b. As part of the registration process, make available the application for an investment certificate and allow investors the opportunity to jointly or separately submit this application with their company registration,

    c. Evaluate all applications for incentives and provide a decision to investors in a timely manner.

5. Issue Investment Certificates as follows:
    a. Standard Investment Certificate – This certificate shall be granted on the basis of defined approval criteria and shall also provide a standard set of benefits. This certificate shall be granted quickly and efficiently to anyone who meets the criteria.

    b. Custom Investment Certificate – This certificate shall be the product of an agreement between the investor and government and may only be authorized by the NIC and granted only for projects that make an exceptional contribution to the economy. The government may determine custom criteria and provide custom benefits. The government shall establish the threshold of a significant investment and publish it.

5.5.4. Review of incentive efficacy

The government shall periodically review, at least once every three years, existing incentives to evaluate their effectiveness. It will look at the overall efficacy of the incentives scheme as a whole and efficacy in respect of each individual investment that received an incentive. The following criteria will be used:

1. Overall efficacy of the incentives scheme as a whole,
2. Benefit to local communities and the country at large,

3. Track record in attracting and retaining investors,
4. Impact on government revenues,
5. Impact on environment.

Following this review against the above specified criteria, the government may choose to discontinue incentives which do not meet stated development objectives but may not phase them out for existing investors except as outlined in the incentive agreement granted to the investor upon the approval of the incentive.

5.5.5. Authority to issue incentives

With respect to incentive approval and issuance:

1. Incentives may be granted to investors through an act of Parliament and through legislative and/or administrative programs such as Special Economic Zones,
2. Ministries, working with the NIC, may also offer incentives subject to the criteria specified in this policy,
3. As the Secretariat, KenInvest will be responsible for approving standard or custom Investment Certificates for investors that meet the pre-established criteria,
4. In conjunction with the Ministry responsible for finance, the NIC may evaluate and approve additional incentives related to investment requests from investors under the custom incentive certificate, if these incentives fall outside established guidelines. Such approval shall have the force of law,
5. All government agencies, national or county, wishing to provide non-standard incentives shall first submit the desired incentive to the NIC for approval. For the purposes of this policy, a non-standard incentive is an incentive which is not already provided for in existing (or future) legislative or administrative frameworks.

5.6. SECTOR FRAMEWORK

The Government's economic policy priorities are set out in its Vision 2030, including targeted sectors. This document and its many subsidiaries articulate the country's strategy over the period of 2008 to 2030 to become a newly industrializing middle income country providing a high quality of life to all its citizens by the year 2030. The strategy also places the country firmly within the growing opportunities of the East African region. The strategy is based on three pillars - economic, social and political - that are to be implemented in successive five-year medium-term plans. These sectors identified complement the country's competitive advantages, advance the country's economic development agenda and meet the needs of its citizens.

Policy measures

To focus adequate resources on priority sectors, the government is to:

1. Outline priority sectors set out in Vision 2030 and other government policies, by industry and activity, to develop focused promotion and facilitation, and align incentives appropriately.
2. Improve the regulatory and business climate of the industries and activities identified.
3. Evaluate the progress of development within priority sectors.

With respect to the flagship projects prioritized within the five-year medium term plans, the government will:

1. Work with relevant agencies to ensure clarity of projects,
2. Work with relevant ministries, departments and agencies to develop sector profiles,
3. Facilitate and manage emerging issues,
4. Identify concrete bankable projects from the profiles for promotion by KenInvest or through PPP.

5.6.1. Sector restrictions

Kenya is very open to private investments, both domestic and foreign, and across most sectors of the economy, with the main restrictions being those around investments that are vital and highly sensitive to the country's security, safety and of national interest.

To ensure investment proposals are consistent with Kenya's national interest, the government may review major foreign and domestic investment proposals on a case-by-case basis through the National Investment Council, which can make final recommendations to the Government on those proposals. The review system allows the Government to consider community concerns around foreign ownership of certain assets affecting national interest.

The following policy measures apply with respect to sector restrictions:

1. Restricted/Negative List – KenInvest shall publish a list of restricted sectors on its website and on any promotional materials which comprehensively layout Kenya's national investment policy. This list shall be generated by the NIC in its periodic reviews of the investment climate. The list shall be approved by the Cabinet and or Parliament.
2. Review: Every three years, the NIC will update and publish the list on sensitive and restricted sectors.
3. Exemptions – Parliament may grant exemptions from this policy upon recommendation of the NIC for investors seeking to make significant investments in priority sectors, or if the NIC deems such investment necessary for national interest. Current investments that would otherwise be restricted under this policy shall be grandfathered as of the enactment of the policy except in instances where such investors wish to expand their investment after policy enactment.

5.7. REGIONAL INTEGRATION AND INVESTMENT AGREEMENTS

5.7.1. Regional Integration

Kenya recognizes the benefits accruing from effectively integrating her economy with others in the region as regional integration strengthens investment-growth links and enhances business environment for investment. This policy is cognizant of Kenya's commitments to the East African Community (EAC), the Common Market for Eastern Southern Africa (COMESA) and the African Union (AU). The Kenya Investment Policy is therefore aligned to reflect the aspirations of regional agreements, including regional integration policies and regulatory reforms that enhance determinants to attract higher levels of diversified FDI.

5.7.2. Investment Agreements

Kenya is actively involved in bilateral investment treaty (BITs) and multilateral treaty negotiations with various countries, including investment related chapters in free trade agreements among others. Kenya investment framework is consistent with its international obligations and requisite policy space to achieve national development goals. An ad hoc negotiating committee is in place, chaired by the National Treasury, and comprising of representatives from the Ministry of Foreign Affairs, Attorney General's Office and Kenya Investment Authority. The negotiations are reactive to requests received, and are based on models presented by negotiating partners. There is need to align treaties with modern practice, safeguard Kenya's development agenda and goals and establish clauses that will protect both the investor and the state from any untoward arbitration threat.

The KIP recognizes that treaties should be designed as part of a holistic, long-term government strategy, integrating the various dimensions of sustainable development (particularly given the time-horizon of treaties) given that commitments, obligations and rights in treaties can affect domestic policy space, regulatory systems and the rights of stakeholders in unanticipated ways. Treaties should provide opportunities to shape the respective obligations of all stakeholders, including home governments and investors. It also notes that policy goals, human rights obligations, and sustainable development objectives might not be considered in investor state dispute settlement unless considered explicitly in the treaty.

The KIP therefore aims at modernizing and strengthening Kenya's investment regime by putting in place a series of measures and regulations that will ensure Kenya remains open to foreign investments. It provides guarantees, protection and obligations commensurate to its level of development to all investors while preserving its rights to pursue developmental public policy objectives.

Policy measures

1. KIP recognizes and ensures that IIAs are balanced in setting out rights and obligations of the State and investors for the benefit of all parties.

2. Under the Ministry responsible for investments, a single, unified negotiating body shall be established, coordinated within KenInvest, dedicated in researching and negotiating Kenya's position with respect to investment agreements and treaties, including related chapters in other international and regional treaties. In line with this, a standing national committee responsible for negotiating BITs and related chapters shall be constituted and gazetted comprising of members drawn from the Ministry of Foreign Affairs, the National Treasury, State Department responsible for Trade and Ministry responsible for investments, Kenya Investment Authority and Attorney General's Office. This team will, from time to time co-opt relevant sectors.

3. The National Investment Council shall guide the country's negotiating team in developing Kenya's position with respect to investment agreements and treaties, including related chapters in other international and regional treaties.

4. A report will be prepared annually on the state of play in the national, regional and international investment policy and agreements arena to advice on necessary reforms.

5. A review of the existing treaty network in line with "best practice" will be undertaken and measures will be put in place to regularly review agreements and treaties for effectiveness and relevance and adapted to changing development dynamics.

6. Develop Kenya's model bilateral investment treaty.

7. Investments that qualify to be covered by BITs will be in the following context.

    a. *Be a private enterprise within the territory of Kenya, established, acquired or expanded by a foreign investor, and admitted in accordance with the laws of Kenya;*

    b. *Be registered, approved and/or recognized in accordance with the legal requirements of Kenya;*

    c. *To qualify as an investment covered by a BIT, an enterprise must have the following characteristics of an investment: a substantial commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and significance for Kenya's development.*

5.8. OUTWARD FDI

Domestic firms' investment abroad offers the home country excellent opportunities to profit from international markets through the global value chains internationalizing companies build and link up to. Outward investment is therefore an instrument to strengthen domestic companies and ensure that their expansion also benefits the home country, through taxes, transfer of technology, employment, country image building.

Parallel to the emergence of the BRIC economies, there is an increasing trend of South-South investments (i.e., foreign investment flowing from a developing country into the economy of another developing country) and this may justify the inclusion of the "outward" investment in the NIPS, by these developing countries that have at least some firms able to invest overseas. Parallel to the emergence of the BRIC economies, there is an increasing trend of South-South investments (i.e., foreign investment flowing from a developing country into the economy of another developing country) and this may justify the inclusion of the "outward" investment in the NIPS, by these developing countries that have at least some firms able to invest overseas.

In the long run countries should not only foster domestic investment, but also strengthen domestic firms so that they can compete internationally. To this end, internationalization is a necessary step as it offers domestic firms access to international resources, factors of production, markets and strategic assets. Outward investment is therefore crucial to allow developing country companies to integrate into the international production network. Outward investment is thus a relevant element of a national development strategy to complement inward investment.

Policy measures

The government is to:

1. Continue the promotion of cross border investments, particularly in Africa through regional agreements such as EAC and COMESA to take advantage of incentives offered by other countries.

2. Develop collaborations with other countries to identify viable investment opportunities for Kenyan investors.

3. Create an outward investment unit within KenInvest focused on helping domestic investors with FDI particularly in regions where the country has investment or regional agreements in place.

Chapter 6:

POLICY IMPLEMENTATION, MONITORING AND EVALUATION

6.1. HARMONIZATION AND RATIONALIZATION OF LEGISLATION

To improve the business environment and ease the operation of investors across the entire investor journey or cycle (entry, operation, growth, and closure), all the legislation touching or impacting on investments will be harmonized and rationalized as one of the initial activities of implementing the policy.

6.2. INSTITUTIONAL FRAMEWORK

The existence of multiple institutions that deal with investment-related issues without adequate coordination has weakened the effectiveness of the country's investment promotion and facilitation efforts. With devolution, these institutions extend to county governments, which have taken on investment promotion in a legitimate effort to attract investments into their county. This lack of efficacy is manifested through under capacity of the various institutions, an unclear strategy about which investment opportunities to target, and a negative investor experience as they navigate multiple bureaucracies. Increased institutional complexity also means longer delays, as investors seeking special approval or incentives for significant investments are forced to wait. These factors contributed to limit private investment, including FDI, relative to the country's potential.

The successful implementation of this policy will be dependent upon the collaborative efforts and synergies of all the stakeholders and actors through establishment of an effective partnership framework via new institutional and management arrangements. The policy is also cognisant of functional assignments between the two levels of government with respective accountability, reporting, and management responsibilities as stated in Article 189 of the Constitution of Kenya (2010) and Article 4 of the Intergovernmental Relations Act.

The policy implementation process will adopt an intergovernmental mechanism approach involving different stakeholders – State actors (government ministries and agencies) at the national and county levels; investors (individuals, corporations, domestic and foreign); regulatory bodies; professional associations; private sector representatives; non-state actors (chambers of commerce); and development partners. The following are the key investment sector actors and their respective roles in implementing this policy:

Policy measures

6.2.1. National Investment Council

Through the Investment Promotion Act 2004, an attempt was made to harmonize investment related activities and economic development under the National Investment Council. Section 26.1 of the Act provided for the establishment of The National Investment Council as an unincorporated body, with the Chairman who shall be the President or a Minister designated by the President. The NIC was to:

a) *Advise the Government and government agencies on ways to increase investment and economic growth in Kenya; and*

b) *Promote co-operation between the public and private sectors in the formulation and implementation of government policies relating to the economy and investment.*

The NIC was however not operationalized.

Recognizing the need for better coordination of investment policy, promotion and investment-related initiatives at both the national and county levels, the National Investment Council (NIC) shall be operationalized to provide an overarching coordination mechanism. The Council will be chaired by The President while the Cabinet Secretary responsible for investment shall be the secretary and the Kenya Investment Authority (being the national Investment Promotion Agency) shall serve as the Secretariat of the Council.

The mandate of the NIC is to:

a. *Formulate an investment strategy;Provide guidance on implementation, review, amendment* *and harmonization of sectoral laws and policies to achieve the objectives of this policy;*

b. *Monitor the economic environment to identify impediments to investment and economic growth and to propose incentives to promote investment and economic growth;*

c. *Monitor the economic development in Kenya to identify areas that may not be benefiting from economic development;*

d. *Consult with persons from both the public and private sectors to obtain views and suggestions for promoting investment and economic development;*

e. *Address high impact and unique investor requests;*

f. *Assist in resolving investment related disputes at the highest levels; and*

g. *Provide guidance on the negotiations of bilateral and multilateral investment agreements, approving bilateral and multilateral investment agreements, investment related polices programmes and strategies of investment promotion and facilitation.*

The NIC is comprised of not more than ten members who shall be appointed by the President and is constituted as follows:

a. *Cabinet Secretary responsible for Investment Affairs;*

b. *Cabinet Secretary responsible for the National Treasury and economic planning;*

c. *Cabinet Secretary responsible for Foreign Affairs;*

d. *Cabinet Secretary responsible for Lands;*

e. *Attorney General;*

f. *Chairperson of the Council of Governors;*

g. *Representative of the County Executive Committee responsible for investment matters;*

h. *Two representatives of the private sector nominated by the bodies representing the largest number of institutions in the private sector; and*

i. *A representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge.*

Temporary members can be co-opted considering the merits of an investment, policy or legislative initiative.

6.2.2. Kenya Investment Authority (KenInvest)

To support the NIC in its mandate for investment promotion, and to better define the coordination between national and county agencies, and in line with Article 189 (1) and (2) of the Constitution, the Government shall strengthen KenInvest. The mandate of KenInvest is to:

1. Serve as the secretariat for the NIC and

    a. *Coordinate investment-related activities by ministries, departments, agencies and county governments; Provide support and capacity building to County government institutions* *and investment units responsible for investments, and to develop their county profiles and effectively utilize the country's investment promotion tools;*

b. *Coordinate the national and county investment promotion programmes of institutions that promote investment;*

c. *Assist domestic investors seeking to invest abroad with investment establishment and advocacy efforts where necessary and appropriate to increase outward FDI;*

d. *Coordinate research and negotiations of Kenya's position with respect to investment agreements and treaties, including related chapters in other international and regional treaties;*

e. *Supervise the implementation of facilitation, retention, support and aftercare activities by both national and county governments;*

f. *Coordinate with counties the promotion, retention, support and aftercare activities;*

g. *Work with counties to highlight profitable investment opportunities, publicize investor-ready and bankable projects, identify local partners and provide a positive image of the economy to investors;*

h. *Establish the country's investment promotion website;*

i. *Deliver high quality facilitation services to investors to maximize the value of existing investments, ensure investment retention and encourage reinvestment to help the country realize its vision of economic independence;*

j. *Produce an annual monitoring and evaluation report to the NIC that assesses the country's progress against its stated investment objectives as well as the impact of existing investments in five areas: 1) county and community engagement; 2) sustainable development; 3) diversified export-led growth; 4) empowerment of domestic small and medium enterprises; and 5) regional integration including participation in regional value chains, Kenya's role as a regional strategic hub, and regional access to markets;*

k. *Engage in investment policy advocacy at the national and county level, and formulate investment policy recommendations accordingly;*

l. *Evaluate existing investments' contributions to inclusive growth, job creation, community outreach, Vision 2030, SDGs, and Agenda 2063;*

m. *Publish an annual report of the NIC's monitoring and evaluation along with SMART recommendations based on findings. In successive years, the NIC shall publish progress against recommendations;*

n. *Undertake investor tracking and conduct annual surveys of investor satisfaction which shall be shared with the NIC and published on its website;*

o. *Lead an inter-agency team in a triennial review of the investment climate with recommended changes for the NIC to implement in its function as the secretariat;*

p. *Provide an annual investor aftercare report to the NIC and share this report with all registered investors who hold a valid investment certificate;*

q. *Take lead in collection of FDI and DDI data, including impact data, which may include playing the lead role in coordinating with various government agencies.*

2. KenInvest shall have a board comprised of senior members from national and county governments, and the private sector, including both Kenyan and foreign investors.

3. The Government must ensure that KenInvest has adequate resources to actively provide pre- and post- investment support to various investors and counties.

4. To avoid different agencies at the national and county level contacting the same investor without
5. coordination, and to ensure that counties are appraised of potential investment opportunities:
    r. *KenInvest shall maintain a database of all contacts established with current and potential investors. The database shall be freely available to all county governments, who also engage to update it based on their contacts with investors (see 6.1.3.3);*
    s. *KenInvest shall contact counties if:*
        i. An investor has expressed interest in a specific county;
        ii. Any potential investment opportunity for which a county may be suited for arises.
6. KenInvest will have final responsibility for handling investor concerns related to aftercare, support, retention or facilitation.
7. Coordinate an annual forum with County Investment Units to review the collaboration and relevant investment related issues.

6.2.3. County investment promotion

To ensure that counties are benefitting from investment activities and better define the coordination between national and county agencies, and in line with Article 189 (1) and (2) of the Constitution, the following policy measures apply to counties:

1. Counties will create their own county investment units (CIUs) that will range from an officer, a department of a desk responsible for matters of investment, provided their mandates do not conflict with national policy objectives or legislation. Counties notify KenInvest in writing as to which entity is authorized to carry out investment-related activities on its behalf, prior to undertaking investment activities to avoid potential investor conflicts. Counties may request KenInvest to;
    a. *Deploy officers to their counties or,*
    b. *Create investment desks at KenInvest. KenInvest may provide requested resources at their sole discretion and based on available resources.*
2. CIUs will be responsible for the following promotion related activities:
    a. *Developing their unique value proposition to investors in conjunction with KenInvest, based on their competitive advantages and working with KenInvest to create promotional literature that can be shared with potential investors,*
    b. *Identifying and/or defining concrete projects within their counties that are ready for investment. Counties may work with KenInvest on this exercise,*
    c. *Working closely with KenInvest and local communities to identify land available for investment and facilitate the entry process for investors,*
    d. *Providing incentives to investors that fall within their devolved authority including land and fast-tracking of investor permits.*
    e. *Facilitating community engagement and review of potential investment projects and obtaining local endorsement for any county-based government incentives.*
    f. *Working closely with KenInvest to provide effective investor aftercare and supporting KenInvest with identifying and facilitating reinvestment and upgrading of current investments.*

g Monitoring the investment climate in the county and provide write ups /policy memorandums to the county and national government for corrective action.

h. In liaison with KenInvest, profile and maintain a database of MSMEs that could form partnership

i. with large players, in order to encourage and enhance domestic value addition.

2. To avoid different agencies at the national and county level contacting the same investor without coordination:

   a. There will be a national CRM where both KenInvest and the CIUs are able to interact with,

   b. CIUs must notify and coordinate with KenInvest before undertaking any investment-related activities requiring investor contact,

   c. CIUs must consult the investor contact database established by KenInvest before contacting investors and update the database after any contact is made. If an investor is not in the database and KenInvest has not contacted the investor, the county shall update this database with the new contact details.

6.3. INVESTMENT COOPERATION

6.3.1. County regional blocs

As part of the authority counties have under devolution, counties are free form regional blocs that work with one another to promote investment. Indeed, these activities are highly encouraged where they help increase the individual county competitiveness and improve overall investment in the country. Regional blocs are beneficial because they can help counties pool together resources, create a larger market for investors, and increase efficiency for investors thereby reducing costs.

6.3.2. Public-private partnerships

Public-private partnerships are an important part of investment facilitation. The country provides for public-private partnerships in the Public-Private Partnerships Act. In certain investment scenarios, private investors may require public investment to move forward with an investment. Examples include the extractives industry, energy, and transportation. Such arrangements are governed by the Public Private Partnerships Act (2013). This policy endorses these partnerships and strong inter-agency cooperation to increase their chances for success.

6.3.3. National and County intergovernmental cooperation

The policy recognizes the importance of intergovernmental cooperation between national and county institutions and encourages it. The policy in Article 189 of the Constitution of Kenya (2010) and Article 4 of the Intergovernmental Relations Act. The various institutions outlined in this policy including the National Investment Council, KenInvest and County Investment Promotion Units are designed to work harmoniously to enable efficient investment promotion, attraction, facilitation, and aftercare efforts. As set forth herein, the national government is charged with providing an enabling environment for investment promotion and facilitation which includes providing technical support to counties as they undertake their investment promotion efforts. Counties have the autonomy to pursue investors within the context of devolution and under the authority granted to them by the Constitution of Kenya (2010) in a harmonious manner to prevent undue gaming by investors and to present a united front as investors deal with various national and county governments.

6.3.4. Investment relationships

The KIP closely complements other national strategies that aim to fulfil the Vision 2030 goal of increasing economic growth. The underlying themes recognised and complemented include the development of local firms, the creation of better jobs as well as economic diversification through private sector growth, and the recognition that the Government has a role to play in creating an enabling environment for business.

The KIP is further linked to various investment-related policies, treaties and investment agreements. These include regional agreements such as COMESA, bilateral trade (such as the Africa Growth Opportunity Act with the United States of America) and investment agreements, and trade agreements between Kenya and other regions, such as the European Union. In this context, this policy is formulated with the goal of acting as an anchoring policy against which future investment agreements shall be assessed to ensure a cohesive investment strategy that brings Kenya closer to its economic goals.

Cooperation is an important aspect of the KIP. Successful implementation of this requires extensive collaboration across all national and county-level entities dealing with investment-related issues, including the ministry responsible for investments, the NIC, KenInvest, county governments, the treasury and other ministries as well as the private sector and civil society.

The NIC is designed to bring key actors across the investment spectrum together to ensure that pertinent investment issues are addressed as efficiently as possible. As the secretariat for the NIC, KenInvest handles coordination activities to facilitate the greatest amount of cooperation and improve the investment experience for investors while striving for optimal outcomes at local and national levels.

Regulators are an important part of investment policy. This policy advocates for regular meetings between the investment promotion agency and regulators as part of the advocacy efforts of KenInvest to ensure effective implementation of this policy.

From time to time, joint cooperation with other investment promotion agencies regionally may be required to further the goals in this policy. These joint promotion and coordination activities are encouraged and are to be supported by the government. Some of these activities may include a joint forum where the heads of the investment promotion agencies come together at a regional level. These working relationships may also extend across other forms of cooperation including Kenya's involvement in the EAC and COMESA.

6.3.5. Summary of the role of various actors

The functions across the investment cycle are delineated as follows:

1. Investment strategy development

   The NIC is responsible for formulating the country's overall investment strategy and implementing a corresponding policy to ensure that investment contributes to the country's development goals.

2. Investment climate

   The investment climate is comprised of several important components, each of which has one or more government agencies responsible for its health. For the purposes of this policy, key components of the investment climate include a sound regulatory environment, good macroeconomic conditions and a good security environment. This policy recognizes that a sound regulatory environment arises from good regulations which result from formal legislation enacted by parliament as well as regulations from the various ministries and regulatory agencies. Further, good macroeconomic conditions are fostered through the sound implementation of government policies across the entire spectrum of government activities by both national and county governments. Lastly, a critical component of any investment climate is a robust security environment where investors, employees and all stakeholders feel safe.

   In the context of the national investment policy, the responsibility to advocate for a sound investment climate lies with the National Investment Council – which is comprised of national and county government representatives – and KenInvest. As it relates to counties, security is an especially sensitive issue since some counties may not have an enabling investment climate due to heighted security concerns. KenInvest, working with respective IPUs in counties where security is a concern, will work to advocate for increased resources by the national government to affected counties to improve the security situation in those counties and increase those counties' ability to properly attract investment.

3. Investment agreement reviews

The NIC is responsible for reviewing and approving BITs and investment-related chapters in treaties.

4. Investment promotion and facilitation

The primary responsibility of investment promotion and facilitation falls on KenInvest. Counties, through the County investment institutions, play a major role by developing bankable projects, outlining their competitive positions, and preparing marketing materials aligned to their areas of strategic focus. Officials at the county level also play an important role in investment facilitation, including securing community approval, providing land where needed, and participating in investment promotion activities for specific investment projects in collaboration with KenInvest.

1. ***Investment entry and establishment***

   Various government agencies are involved at different levels along the investment entry and establishment process. These agencies include the Revenue Authority, the Department of Immigration, the counties, and the ministries in charge of granting special permits and licenses. KenInvest plays a facilitation role among these entities through the One-Stop Centre to minimize the administrative burden to investors and government agencies.

2. ***Investment retention and aftercare***

   Counties play a major role in ensuring that investments located within their counties are given the highest level of attention. The Government is responsible for ensuring that the overall investment climate remains attractive to potential and existing investors. KenInvest is responsible for taking the lead to provide effective aftercare services by working with counties and national government actors.

3. ***Investment assessment***

   Ensuring that investments are contributing to the country's economic, social and environment sustainability objectives is important. Measuring investment impact with respect to community engagement, development objectives, and key investment linkages between investors and small and medium enterprises is shared responsibility among the different actors. While the NIC will spearhead this process, it must work closely with other national and county institutions to ensure that the country continues to target and attract the proper investment mix.

To ensure greater cohesion among government agencies, the government may:

1. *Formalize functions across different actors through inter-agency service level agreements,*
2. *Such agreements should be submitted to the NIC to prevent redundancy and monitoring and evaluation purposes.*

6.4. FINANCIAL REQUIREMENTS

Recent empirical research by the University of Oxford, using time series data for many countries, indicates that investment of US$ 1 in investment promotion can generate US$ 189 in investment and one job for every $78 spent on investment. The implementation of the policy will require additional funds over and above the budget currently allocated to investment promotion and facilitation. The establishment and operationalization of the National Investment Council will further require financial allocation.

It is therefore imperative for both national and county governments to allocate sufficient budget on an annual basis investment promotion and facilitation, land acquisition and feasibility studies and investment opportunities packaging.

6.5. MONITORING AND EVALUATION

Monitoring and evaluation are crucial to ensuring effective implementation of the KIP, as measured by progress against stated policy objectives. In this regard, the matrix annexed highlights what needs to be done in line with the proposed measures, including verifiable indicators, showing clear expected outcomes.

1. Provide for an effective monitoring and evaluation process by improving investment (including FDI) data collection methodologies, including collecting data on investment impact in terms of employment, imports and exports, fiscal contribution, linkages etc.
2. Supervise a triennial review on the investment climate and produce recommendations on legislative actions for Parliament’s consideration.

   Commission a report every two years studying the effectiveness of investment incentives and produce recommendations on how to modify them to achieve development goals.

Monitoring and evaluation efforts may utilize the national integrated monitoring systems designed to track government performance.

Annexes

7.1. RELATED INVESTMENT LEGISLATION

STATUTE	AUTHORITY
Constitution of Kenya 2010	
Banking Act 1989	Central Bank of Kenya
Capital Markets Act 1989	Capital Markets Authority
Competition Act 2011	Competition Authority of Kenya and Competition Tribunal
Contracts in Restraint of Trade Act 1932	Judiciary
Consumer Protection Act 2013	Kenya Consumer Protection Advisory Committee
Customs & Excise Act 1978	Kenya Revenue Authority
Dairy Industry Act	Kenya Dairy Board
Arbitration Act 1996	Judiciary
Agriculture & Food Authority Act 2014	Agriculture & Food Authority
Companies Act 2015	Office of the Attorney General
Air Passenger Service Charge Act 1970	Kenya Revenue Authority
Alcoholic Drinks Control Act 2010	NACADA
Anatomy Act 1967	Ministry of Health
Anti-Doping Act 2016	Anti-Doping Agency
Anti-Counterfeit Act 2009	Anti-Counterfeit Agency
Anti-Corruption & Economic Crimes Act 2003	Ethics and Anti-Corruption Commission
Appellate Jurisdiction Act 1977	Judiciary
Access to Information Act No. 13 2016	
Architects & Quantity Surveyors Act 1934	Board of Registration of Architects & Quantity Surveyors
Auctioneers Act 1997	Auctioneers Licensing Board
Advocates Act 2000	Council of Legal Education and Council of The Law Society of Kenya
Accountants Act 2008	Institute of Certified Public Accounts of Kenya (Chief Justice)
Basic Education Act 2013	National Education Board, Education Standards and Quality Assurance Commission, and County Education Board

STATUTE	AUTHORITY
Betting, Lotteries & Gaming Act 1966	Betting Control and Licensing Board
Bill of Exchange Act 1927	Central Bank of Kenya
Biosafety Act 2011	National Biosafety Authority
Branding of Stock Act 1907	Ministry of Industry
Bribery Act 2016	
Brokers Act 1930	
Building Societies Act 1956	Ministry of Industry
Business Registration Service Act 2015	Business Registration Service Board
Carriage by Air Act 1993	Ministry of Transport and Infrastructure
Carriage of Goods by Sea Act 1926	Ministry of Transport and Infrastructure
Cattle Cleansing Act 1937	Ministry of Agriculture, Livestock and Fisheries
Central Depositories Act 2003	Capital Markets Authority
Cheques Act 1968	Central Bank of Kenya
Climate Change Act 2016	Ministry of Environment
Bill of Lading Act 1927	Central Bank of Kenya
Civil Aviation Act 2013	Civil Aviation Authority
Co-operative Societies Act 1998	Ministry of Industry
Coastal Development Authority Act 1990	Coastal Development Authority
Copyrights Act 2003	Kenya Copyrights Board
Compounding of Portable Spirits Act 1961	Ministry of Health
Crop Production & Livestock Act 1926	Agriculture, Livestock and Fisheries
Crops Act 2014	Agriculture & Food Authority
Debts Act 1913	Judiciary
Deeds of Arrangement Act 1930	Ministry of Land, Housing and Urban Development
Disposal of Uncollected Goods Act 1987	Ministry of Industry
Distress for Rent Act 1938	Judiciary
Employment Act 2008	National Labour Board
Employment & Labour Relations Court Act 2011	Judiciary
Energy Act 2007	Energy Regulatory Commission and Rural Electrification Authority
Engineering Technology Act 2016	Kenya Engineering Technology Registration Board

STATUTE	AUTHORITY
Engineers Act 2012	Engineers Board of Kenya
Environment & Land Court Act 2011	Judiciary
Environment Management & Coordination Act 2000	National Environmental Management Authority
Entertainment Act Cap 479	
Equitable Mortgages Act 1909	Judiciary
Estate Agents Act 198	Estate Agents Registration Board
Ethics & Anti-Corruption Commission Act 2011	Ethics & Anti-Corruption Commission
Excise Duty Act 2015	Kenya Revenue Authority
Explosives Act 1931	Ministry of Interior and Coordination of National Government
Export Processing Zones Act 1990	Export Processing Zones Authority
Fatal Accidents Act 1946	Judiciary
Civil Procedure Act 1924	Judiciary
Criminal Procedure Act 1930	Judiciary
Ferries Act 1936	
Fertilizers and Animal Foodstuffs Act 1967	Fertilizer and Animal Foodstuffs Board of Kenya
Firearms Act 194	Firearms Licensing Board
Fisheries Act 2016	Ministry of Agriculture
Food, Drugs and Chemical Substances Act 1965	Public Health (Standards) Board
Foreign Investments Protection Act 1964	Under the Ministry of Foreign Affairs and International Trade
Foreign Judgments (Reciprocal Enforcement) Act 1984	Judiciary
Forests Act 2007	Board of the Kenya Forest Service
Forest Conservation and Management Act 2016	Kenya Forest Services
General Loan and Stock Act 1950	National Treasury
Gold Mines Development Loans Act 1952	Gold Mines Development Loans Board under the Ministry of Mining
Government Contracts Cap 25	
Government Proceedings Act 1956	Judiciary
Health Act 2017	Ministry of Health
Hide Skin and Leather Trade Act 1987	Under the Ministry of Industry

STATUTE	AUTHORITY
High Court (Organization and Administration) Act 2016	Judiciary
Hire-Purchase Act 1970	National Treasury
Housing Act 1953	National Housing Corporation
Human Resource Management Professionals Act 2013	Institute of Human Resource Management
Human Tissue Act 1967	Under the Ministry of Health
Immigration Act 2011	
Income Tax Act 1974	Kenya Revenue Authority
Industrial and Commercial Development Corporation Act 1955	Industrial and Commercial Development Corporation
Industrial Property Act 2002	Kenya Industrial Property Institute
Industrial Training Act 1960	National Industrial Training Authority and National Industrial Training Board
Insolvency Act 2015	
Insurance Act 1987	Insurance Regulatory Authority
International Development Association Act 1963	Ministry of Foreign Affairs and International Trade
Inter-Governmental Relations Act 2013	
International Finance Corporation Act 1963	Ministry of Foreign Affairs and International Trade
International Interests in Aircraft Equipment Act 2013	Ministry of Foreign Affairs and International Trade
Investment and Financial Analysts Act 2015	Capital Markets Authority
Investment Disputes Convention Act 1966	Judiciary
Investment Promotion Act 2004	Kenya Investment Authority
Kenya Airports Authority Act 1991	Kenya Airports Authority
Kenya Broadcasting Corporation Act 1989	Kenya Broadcasting Corporation
Kenya Citizens and Foreign Nationals Management Services Act 2011	Department of Immigration
Kenya Cultural Centre Act 1951	Kenya Cultural Centre
Kenya Information and Communications Act 1999	Communications Authority of Kenya
Kenya Literature Bureau Act 1980	Kenya Literature Bureau
Kenya Maritime Authority Act 2007	Kenya Maritime Authority
Kenya Meat Commission Act 1950	Kenya Meat Commission

STATUTE	AUTHORITY
Kenya Medical Supplies Authority Act 2013	Kenya Medical Supplies Authority
Kenya Plant Health Inspectorate Service Act 2016	Kenya Plant Health Inspectorate Service
Kenya Ports Authority Act 1978	Kenya Ports Authority
Kenya Revenue Authority Act 1995	Kenya Revenue Authority
Kenya Roads Board Act 2000	Kenya Roads Board
Kenya Roads Act 2007	Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority
Kenya Trade Remedies 2017	Ministry of Industry, Trade and Cooperatives
Kenya Water Institute Act 2002	Kenya Water Institute
Labour Relations Act 2007	National Labour Board
Labour Institutions Act 2008	National Labour Board
Land Act 2012	National Land Commission
Land Control Act 1967	Ministry of Land, Housing and Urban Development
Land Registration Act 2012	National Land Commission
Landlord and Tenant (Shops, Hotels and Catering Establishments) Act 1965	Ministry of Land, Housing and Urban Development
Law of Contract Act 1961	Judiciary
Law of Domicile Act 1970	Judiciary
Law of Succession Act 1981	Judiciary
Limitation of Actions Act 1967	Judiciary
Limited Liability Partnership Act 2012	
Local Manufactures (Export Compensation) Act 1974	Kenya Revenue Authority
Marine Insurance Act 1968	National Treasury
Maritime Zones Act 1989	Ministry of Agriculture
Meat Control Act 1972	Ministry of Agriculture
Medical Practitioners and Dentists Act 1978	Medical Practitioners and Dentists Board
Merchant Shipping Act 2009	Ministry of Industry
Micro and Small Enterprises Act 2013	Micro and Small Enterprises Authority
Microfinance Act 2008	Central Bank of Kenya
Mortgages (Special Provisions) Act 1968	Judiciary
Motor Vehicle Components and Accessories Act 1965	Ministry of Transport and Infrastructure

STATUTE	AUTHORITY
Nairobi Centre for International Arbitration Act 2013	Nairobi Centre for International Arbitration. (the Attorney General)
National Authority for the Campaign Against Alcohol and Drug Abuse Act 2012	NACADA
National Cereals and Produce Board Act 1985	National Cereals and Produce Board
National Construction Authority Act 2012	National Construction Authority
National Employment Authority Act 2016	National Employment Authority
National Land Commission Act 2012	National Land Commission
National Social Security Fund Act 2014	Retirement Benefits Authority
Non-Governmental Organizations Co-ordination Act 1992	Non-Governmental Organizations Co-ordination Board
Nurses Act 1983	Nursing Council of Kenya under the Ministry of Health
Nutritionists and Dieticians Act.2008	Council of the Institute of Nutritionists and Dieticians
Occupational Safety and Health Act 2007	National Council for Occupational Safety and Health
Occupiers' Liability Act 1963	Judiciary
Office of the Attorney-General Act 2013	The Attorney-General
Partnerships Act 2012	
Pest Control Products Act 1963	Pest Control Products Board
Petroleum (Exploration and Production) Act 1984	Ministry of Energy and Petroleum
Petroleum Development Fund Act 1991	Ministry of Energy and Petroleum
Pharmacy and Poisons Act 1957	Pharmacy and Poisons Board
Physical Planning Act 1998	
Plant Protection Act 1937	Ministry of Agriculture
Preferential Trade Area (Implementation) Act 1991	Authority of the Preferential Trade Area
Prevention of Fraud (Investments) Act 1977	National Treasury
Price Control (Essential Goods) Act 2011	National Treasury
Privatization Act 2008	Privatization Commission
Public Private Partnerships Act 2013	National Treasury
Public Health Act Cap 242	Ministry of Health
Public Procurement and Asset Disposal Act 2015	National Treasury
Radiation Protection Act 1984	Radiation Protection Board
Rating Act 1963	Land, Housing and Urban Development

STATUTE	AUTHORITY
Refinery Throughput Tax Act 1983	Kenya Revenue Authority
Registration of Business Names Act 1951	Ministry of Industry
Registration of Documents Act 1901	Judiciary
Rent Restriction Act 1959	Ministry of Land, Housing and Urban Development
Retirement Benefits Act 1997	Retirement Benefits Authority
Transfer of Businesses Act 1930	Ministry of Industry
Treaty for the Establishment of the East African Community Act 2004	East African Community
Treaty Making and Ratification Act 2012	Ministry of Foreign Affairs & International Trade
Sacco Societies Act 2009	Sacco Societies Regulatory Authority
Sale of Goods Act 1931	Judiciary
Science, Technology and Innovation Act 2013	National Commission for Science, Technology and Innovation
Scrap Metal Act 2015	Scrap Metal Council
Second-hand Motor Vehicles Purchase Tax Act 1963	Kenya Revenue Authority
Sectional Properties Act 1990	Ministry of Land, Housing and Urban Development
Societies Act 1968	Ministry of Industrialization and Enterprise Development
Special Economic Zones Act 2015	Special Economic Zones Authority
Stamp Duty Act 1958	Kenya Revenue Authority
Standards Act 1974	National Standards Council
Stock and Produce Theft Act 1933	Judiciary
Supplies Practitioners Management Act 2007	Kenya Institute of Supplies Management
Tax Procedures Act 2015	Kenya Revenue Authority
Technical and Vocational Education and Training Act 2013	Technical and Vocational Education and Training Authority
Timber Act 1971	Ministry of Environment, and Natural Resource
Tobacco Control Act 2007	Tobacco Control Board
Tourism Act 2012	Tourism Regulatory Authority
Trade Descriptions Act 1979	Ministry of Industry
Trade Marks Act 1957	Ministry of Industry
Trading in Prohibited Goods Act 1966	Ministry of Industry
Transfer of Businesses Act 1930	Judiciary
Trustee Act 1929	Judiciary
Trustees (Perpetual Succession) Act 1923	Under the Ministry of Industrialization and Enterprise Development

STATUTE	AUTHORITY
Work Injury Benefits Act 2007	National Council for Occupational Safety and Health
Wildlife Conservation and Management Act 2014	Kenya Wildlife Service
Weights and Measures Act 1988	Ministry of Industry
Water Act 2003	Water Resources Management Authority
Unclaimed Financial Assets Act 2011	Unclaimed Assets Authority
Universities Act 2012	Commission for University Education
Urban Areas and Cities Act 2013	Ministry of Land, Housing and Urban Development
Use of Poisonous Substances Act 2006	Ministry of Health
Valuation for Rating Act 1992	Ministry of Land, Housing and Urban Development
Value Added Tax Act 2013	Kenya Revenue Authority
Valuers Act 1985	Valuers Registration Board
Veterinary Surgeons and Veterinary Para-professionals Act 2011	Kenya Veterinary Board.

7.2. Implementation Matrix

Policy Intervention Area	Policy Sub-section	Policy Measures	Lead Institution	Timeframe	Success Indicator
1. Investment Entry and Establishment	Notification, Registration and Establishment	1. Maintain an information management system and assign unique identification numbers for all companies and private investments (FDI and DDI) for data collection and monitoring; 2. Create a coordinating framework for national and county government agencies to share company registration information and ease investment implementation; 3. Entrench into law the One-Stop Centre that will enable investors to receive essential services under one roof digitally and physically. The OSS provides both entry and facilitation services.	KenInvest	2019	• Completed investment registration framework • OSC entrenched into law
		1. Draw up a negative list of carefully defined activities where foreign investment is restricted to allow protection of national investors in sensitive areas. The list would be determined by the Cabinet upon the recommendation of the National Investment Council, and be reviewed periodically and applied flexibly so that growing businesses in restricted sectors would not be prevented from forming beneficial joint ventures with foreign partners. 2. Ensure foreign investment in all other activities are open without restriction. FDI will not be subject to compulsory Investment Certificates and minimum capital requirements, except by certain prescribed sector requirements set by various sectoral licensing regimes. 3. Establish clear conditions for special incentives – whether domestic or foreign – obtaining an Investment Certificate. The entitlement to a number of entry permits for foreign workers, in turn, shall be linked to the amounts invested on a sliding-scale basis and the nature of the investment.	NIC	2019	• List of restricted sectors and activities • Published list of available incentives and conditions for receiving them

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2. Investment Protection and Guarantees	Dispute Prevention and Resolution	1. Establish an early alert and tracking mechanism designed to identify and track at-risk investments and; 2. Initiate immediate problem solving, working closely with investors and relevant parties to resolve potential issues. 3. Establish a business ombudsman specifically for investors, within the National Investment Council, who shall receive formal dispute notices and initiate a dispute resolution plan among both parties, to facilitate settlement of arising investment disputes in a speedy, efficient and effective manner. 4. Establish a disputes settlement mechanism between an Investor and the State	KenInvest with NIC and MOITC	2019	• Clear dispute resolution mechanism
3. Responsible Investment	Minimum Standards for Human Rights and Labour	1. Require that Investors and their investments act in accordance with applicable national legislation governing labour and human rights; 2. Ensure that Investors and their investments shall not establish, manage or operate investments in a manner inconsistent with international environmental, labour, and human rights obligations binding on Kenya; 3. Act to protect against human rights abuses by third parties, including investors; 4. Mandate that Investors who violate human rights provide victims effective remedy; 5. Enhance coordination between national and subnational investment promotion organs and labour department to ensure that workers' rights are being protected; 6. Ensure labour legislation is not lowered to attract incentives.	Labour	2019	• Enact policy measures into applicable legislation

Policy Intervention Area	Policy Sub-section	Policy Measures	Lead Institution	Timeframe	Success Indicator
	Domestic Value Added	1. May develop specific sectoral laws and regulations to guide local content and participation. The Local Content Bill 2016 for the extractives industry sector is one such regulation. 2. Shall put in place policies, frameworks, incentives and regulations focused on increasing domestic participation on various supply chains and increased domestic value addition including local training enhancement and development, technology transfer, enhancing the domestic industrial base, employment generation, and increase in ownership. These will be cognizant of Kenya's international and domestic legal commitments. 3. Promote FDI local content uptake by encouraging backward and forward linkages in various value chains to grow the SMEs capacity and productivity as they transition to medium and large companies. 4. Incentivize foreign and domestic investors, including those seeking investment certificates to develop and provide domestic value added strategy that addresses how they intend to increase local employment, provide training, enhance domestic procurement, provide technology transfer, and encourage enterprise development. 5. Measure the effectiveness of any local content legislation and measure its impact with respect to benefitting local communities.	MOITC	2019	• Clear domestic value added legislation incorporated into amended Investment Promotion Act

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4. Investment Promotion and Facilitation	Investment Promotion	1. Amend Investment Promotion Act (2004) and align it to the new constitutional dispensation and Kenya's obligation under treaties or conventions that have been ratified. 2. Operationalize the National Investment Council. 3. Formulate framework legislation, guidelines and stakeholder engagement for seamless coordination of investment promotion and facilitation and to ensure investor targeting and support to meet priority objectives. 4. Align national and subnational investment promotion strategies as part of the investment promotion process. 5. Embrace ICT and develop a digital platform to enhance investment information sharing.	MOITC / Parliament	2019	• Amended Investment Promotion Act that includes policy recommendations
	Investment Facilitation	1. Develop a national CRM system that will be shared between national and subnational governments 2. Establish investor services that help investors with pre-establishment support 3. Constitute a land committee comprising of relevant institutions to handle investment-related matters from inception of the project to dispute resolution where it may arise, keeping in mind the fact that land is an economic resource that should be managed productively; and that land is a finite resource that should be utilised sustainably. This committee shall be cognizant of the fact that in respect to private land, no land shall be taken without the express consent of the registered owner. 4. In line with the Land Act, 2012 and subject to Article 65 of the Constitution, land banks will be established and could be used for large projects, including encouraging counties to establish a forced savings scheme where a percentage part of their budget allocation goes to purchasing land to be set aside for investment purposes. In order to ring fence the development budget for land and to stop the scheme from time to time, a mechanism will be developed to review the adequacy of the land bank and other investment constraints pertaining to land, to identify whether the hindrance has been addressed successfully.	KenInvest in collaboration with Ministry of Lands	2019	• National CRM established • Land Investment Committee established

Policy Intervention Area	Policy Sub-section	Policy Measures	Lead Institution	Timeframe	Success Indicator
	Aftercare, Retention and Advocacy	1. Establish clear quantitative and qualitative targets for the retention of high-quality investments. 2. Provide for continuous evaluation of the quality of investor support by both national and county governments. 3. Undertake strong advocacy role to improve investment climate based on its ongoing evaluation of the investment climate. An annual State of Investment report shall be published.	KenInvest in collaboration with NIC	2019	• Clear retention KPIs • M&E plan for evaluating quality of investor support • Advocacy plan defined and implemented
5. Incentives Framework	Incentives	1. Utilize evidence based tax incentives to avoid unnecessary erosion of the tax base through tax incentives, by undertaking research to ascertain empirical outcomes of existing incentives. 2. Conduct a periodic review of tax incentives to ensure relevance and effectiveness. 3. Review the current incentive regime, to identify the possibility of harmonizing existing tax incentives into a uniform rate that may apply across the board for all investors. 4. Through, KenInvest, publish a periodic investor related tax incentives manual for information sharing purposes. 5. Develop and implement national policies that incentivize investors in developing human capacity of the domestic labour force. They may include incentives to encourage employers to invest in training, capacity building and knowledge transfer, paying attention to the special needs for youth, women and other vulnerable groups. 6. The county governments will provide incentives in line with the Constitution. 7. Undertake mandatory Regulatory Impact Assessment (RIA) on any new law/regulation proposed both at the National and County Government level. The RIA will provide a detailed and systematic appraisal of the potential impacts of a new regulation/legislation/any government action impacting on business in order to assess whether the action is likely to achieve the desired objectives. This shall apply across the board.	MOITC in collaboration with Kenya Revenue Authority, KenInvest		• Define incentives framework in the amended Investment Promotion Act • Publication of available investor incentives by KenInvest • Completed RIA

Policy Intervention Area	Policy Sub-section	Policy Measures	Lead Institution	Time-frame	Success Indicator
6. Sector Framework	Restricted Sectors	1. **Restricted List** – KenInvest shall publish a list of restricted sectors on its website and on any promotional materials which comprehensively layout Kenya's national investment policy. This list shall be generated by the NIC in its periodic reviews of the investment climate. 2. **Review**: Every three years, the NIC will update and publish the list on sensitive and restricted sectors. 3. **Exemptions** – Parliament may grant exemptions from this policy upon recommendation of the NIC for investors seeking to make significant investments in priority sectors, or if the NIC deems such investment necessary for national interest. Current investments that would otherwise be restricted under this policy shall be grandfathered in as of the enactment of the policy except in instances where such investors wish to expand their investment after policy enactment.	KenInvest in collaboration with the NIC	2019 and ongoing	• List of restricted sectors
7. Institutional Architecture	Harmonization and Rationalization of Legislation	All the legislation touching or impacting on investments will be harmonized and rationalized as one of the initial activities of implementing the policy.	MOITC in collaboration with KLRC, KenInvest, CoG, MCA's Association and Parliament	2019	• Harmonized and Rationalized Legislation
	NIC Establishment	1. Advise the Government and government agencies on ways to increase investment and economic growth in Kenya; 2. Promote co-operation between the public and private sectors in the formulation and implementation of government policies relating to the economy and investment.	Parliament in collaboration with MOITC	2019	• NIC established

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	Kenya Investment Authority (KenInvest)	1. The Government must ensure KenInvest has adequate resources to actively provide pre- and post- investment support to various investors and counties. 2. Avoid different agencies at the national and county level contacting the same investor without coordination, and to ensure that counties are appraised of potential investment opportunities: a. *KenInvest shall maintain a database of all contacts established with current and potential investors. The database shall be freely available to all county governments, who also engage to update it based on their contacts with investors (see 6.1.3.3),* b. *KenInvest contact counties if:* i. An investor has expressed interest in a specific county, ii. Any potential investment opportunity for which a county may be suited for arises. 3. Coordinate an annual forum between KenInvest and County Investment Units to review the collaboration and relevant investment related issues.	KenInvest in collaboration with MOITC and Treasury	2019	• Ensure IPA is fully funded • Establish national CRM for inter-governmental access • Commence coordination of annual forums
	Counties	1. Counties will create their own county investment units (CIU) that will range from an officer, a department of a desk responsible for matters of investment, provided their mandates do not conflict with national policy objectives or legislation. Counties notify KenInvest in writing as to which entity is authorized to carry out investment-related activities on its behalf, prior to undertaking investment activities to avoid potential investor conflicts. Counties may request KenInvest to; a. *Deploy officers to their counties or,* b. *Create investment desks at KenInvest. KenInvest may provide requested resources at their sole discretion and based on available resources.*	Individual counties in collaboration with KenInvest	2018/19	• Counties have established investment units • Counties create their value propositions Counties identify bankable projects

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