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REPUBLIC OF KENYA

***BUSIA COUNTY GAZETTE
SUPPLEMENT***

ACTS, 2016

NAIROBI, 6th October, 2016

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**THE BUSIA COUNTY TRADE DEVELOPMENT
REVOLVING FUND, ACT, 2016**

No. 7 of 2016

Date of Assent: 16th August, 2016

Date of Commencement: See Section 1

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2016 *Busia County Trade Development Revolving Fund*

**THE BUSIA COUNTYTRADE DEVELOPMENT
REVOLVING FUND ACT, 2016**

**AN ACT of the County Assembly of Busia to provide
for the establishment of a Revolving Fund for
promoting development of small and micro
enterprises and to set up an institutional
framework for coordinating loan disbursements,
and for connected purposes**

ENACTED by the County Assembly of Busia, as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Busia County Trade Development Revolving Fund Act, 2016 and shall come into operation on the 14th day after publication in the *Gazette*. Short title and commencement

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

“Applicant” means any Micro and Small Enterprise owner who has applied for a loan under this Act;

“Board” means the Busia County Trade Development Loans Board established under section 5;

“Chief Officer” means the Chief Officer who for the time being is in charge of Trade, Tourism, Co-operatives and Industrialization;

“County” means Busia County;

“Executive Member” means the County Executive Committee Member for the time being responsible for Trade, Tourism, Co-operatives and Industrialization;

“Fund” means the Trade Development Revolving Fund established under section 4;

“Fund Administrator” means the person duly appointed as the administrator of the Fund pursuant to Section 116 of the Public Finance Management Act and section 8 of this Act;

“Governor” means the Governor of Busia County;

“Loanee” means an Applicant who has received a loan pursuant to the provisions of this Act;

“micro enterprise” means a firm, trade, service, industry or a business activity—

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- (a) whose annual turnover does not exceed three hundred thousand shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investment shall be as determined by the Executive Member from time to time, and includes the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;

“small enterprise” means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover ranges between three hundred thousand and five million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investment shall be as determined by the Executive Member from time to time, and includes the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings.

3. The object and purpose of this Act is to provide for a legal framework for establishment of a Revolving Fund to promote micro and small enterprises in the County in order to—

Object and purpose
of Act.

- (a) promote economic growth and development in the county;
- (b) promote equity and equality in access to trade development services;
- (c) ensure rural and regional development within the county;
- (d) improve the standards of living among the residents of Busia;
- (e) protect interests of marginalized communities;
- (f) enhance provision and access to basic services such as health, education, transport and communication and water.

**PART II — ESTABLISHMENT OF THE TRADE
DEVELOPMENT REVOLVING FUND**

4. (1) There is established a Fund to be known as the Trade Development Revolving Fund. Establishment of the Fund.

(2) The Fund shall consist of—

- (a) grants from the County Government;
- (b) donations from development partners;
- (c) loans negotiated and acceptable by the stakeholders;
- (d) any other funds received by the Board from any legal source.

(3) The Fund shall be used for meeting expenditure relating to —

- (a) loans made to small and micro enterprises in the County; and
- (b) operations of the Board established under this Act.

5. (1) There is established a Board to be known as the Busia County Trade Development Loans Board. Establishment of the Board.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Board shall consist of—

- (a) three representatives from the public appointed by the Executive Member;
- (b) a representative of the local Kenya National Chamber of Commerce and Industry;
- (c) two representatives from the business community who must be owners of a small or micro enterprise;

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- (d) a representative from the Department of Enterprise Development who shall be the secretary of the Board; and
- (e) the County Director of trade who shall be the treasurer of the Board.

(4) The persons appointed as members of the Board in sub-section (3) above shall elect two persons amongst themselves to serve as the Chair person and the Vice chairperson.

(5) A person shall be qualified for appointment as a member under sub section (3) (a) and (c) if the person-

- (a) has knowledge and experience of at least two years in matters relating to trade development, administration and management or any other related field;
- (b) meets the requirements of Chapter Six of the Constitution; and
- (c) is a resident of the County.

(6) In appointing Members to the Board, the Executive Member shall ensure that the membership thereof reflects the diversity of the Communities in the County and adherence to gender balance.

(7) Save for the Member of the Board appointed under subsection 3 (e), approval of the County Assembly shall be sought before appointment of the Members under sub section 3 (a) to (d).

6. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

Conduct of
business and affairs
of the Board.

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

7. (1) The functions of the Board shall be to—

Functions of the
Board.

- (a) consider and approve loan applications submitted from each Small and Micro Enterprise owner;
- (b) ensure timely and efficient disbursement of funds to each Small and Micro Enterprise owner;
- (c) ensure efficient management of the Fund;

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- (d) receive and consider annual reports and returns from each Loanee;
- (e) facilitate capacity development of each Small and Micro enterprise owner;
- (f) receive and address complaints and disputes and take any appropriate action;
- (g) perform any other function in furtherance of the objects of this Act or as may from time to time be assigned by the Executive Member.

(2) The Board shall before approving any loans under this Act, ensure that all the applications are in the format as provided in the First Schedule of this Act.

8. (1) There shall be a Fund Administrator who shall be the County Director of Trade who shall be appointed by the Executive Member in charge of Finance to administer the Fund pursuant to Section 116 of the Public Finance Management Act.

Fund Administrator

(2) For a person to be appointed as the Fund Administrator and the County Director of Trade, the person must have—

- (a) a degree from a recognized university;
- (b) at least five years' experience in management.

(3) The Fund administrator shall be subject to the direction of the Board and be responsible for the day to day management of the affairs of the Board and the Fund.

9. (1) The Board shall appoint such members of staff as shall be necessary for the proper management of the Fund.

Staff of the Board.

10. (1) The Board shall prepare and submit an annual report to the Executive Member for transmission to the County Executive Committee.

Reporting.

(2) The report shall address among others—

- (a) status of funds disbursements;
- (b) status of Micro and Small enterprises which have benefited from the Fund;
- (c) challenges faced in the implementation of the Act, measures taken to address the challenges and proposed interventions;
- (d) contribution made through the Fund to local

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communities in relation to poverty reduction and improvement of standards of living;

- (e) any other matter as the executive member may prescribe.

PART III—FUNDS ALLOCATION AND DISBURSEMENTS

11. (1) The Executive Member, shall for each financial year allocate monies to the Fund in accordance with this Act.

Allocation of funds.

(2) Once monies are allocated to the Fund, they shall remain so allocated and shall not be used for any other purpose other than in accordance with section 4 (3) of this Act.

(3) If for any reason a loan disbursement is cancelled or discontinued during the financial year, monies allocated for such a loan shall be returned to the Fund and credited to the Fund account from which the monies were withdrawn.

12. (1) Each disbursement from the Fund shall be approved by the Board.

Disbursement from the Fund.

(2) The Board shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(3) The Executive Member may prescribe further requirements or conditions to be imposed by the Board in regard to disbursements of the funds.

13. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund account.

Funds to be retained in the Fund Account.

(2) All funds allocated to a loanee shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the account in accordance with section 13 (1) or funds which are not utilized for whatever reasons.

PART IV— LOAN APPLICATION

14. (1) Loan application forms in the form prescribed in the First Schedule shall be issued free of charge from the County Trade Development Office or the Sub-County and Ward Administrator's offices.

Loan processing.

(2) Duly completed application forms shall be submitted to the County Trade Development Office where they shall be registered in the new applications register pending appraisal and vetting.

(3) The County Director of Trade shall prepare vetting forms to verify the information contained in the loan application forms at the indicated site of the Micro or Small Enterprise.

(4) Appraisal of the applications shall be guided by the following—

- (a) purpose of the loan;
- (b) ability of the enterprise to repay the loan;
- (c) credibility of the applicant;
- (d) ability to meet the Fund objectives; and
- (e) adequacy of the loan security.

15. Loan applications shall be deliberated upon and considered for approval during a Board meeting. Successful applicants shall be notified by the Board secretary through a letter of offer which must be acknowledged within 30 days.

Consideration of
loan applications.

16. (1) The list of applications received by the Board pursuant to section 15 shall be tabled for review at a meeting of the Board.

Loan approval.

(2) The Board shall scrutinize and approve for funding the applications that are consistent with the Act within thirty days of receipt of the list.

(3) Where the Board does not approve an application submitted to it under this section, it shall indicate the reasons to the applicant and whether the application may be re-submitted.

(4) The applicant may re-submit to the Board an application once he or she addresses the concerns raised by the Board under sub section (3).

17. A standard loan agreement shall be drawn between the Board and the Loanee which shall be witnessed by a Commissioner for Oaths or a Magistrate and a seal of the Board affixed thereof.

Loan agreement.

18. (1) Before loans are disbursed, loan documentation shall be carefully undertaken by the relevant staff.

Disbursement of
loans.

(2) A loan file shall be opened for each loanee which shall contain—

- (a) the loanee's application form;
- (b) copy of the loanee's identification card;
- (c) loanee's vetting and appraisal forms;
- (d) loanee's business permit;
- (e) valid documentation of the security offered; and
- (f) loanee's passport size photo.

(3) The loanee shall be required to charge his security for the purpose of the loan. Third party securities shall require a duly signed power of attorney form.

(4) The loanee shall be required to insure his loan as per the requirements that will be set out by the Board which insurance expense shall be deducted from the amount disbursed to the loanee.

19. (1) There shall be kept a register of all loans issued per financial year indicating the loanee's name, Identification number, cheque number, amount disbursed, signature and the date of disbursement.

Loans register.

20. (1) The Secretary of the Board shall have powers to randomly visit the loan beneficiaries for purposes of monitoring the progress of their enterprises.

Loan monitoring.

(2) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(3) Monitoring and evaluation of enterprises shall be implemented by the following criteria—

- (a) maintenance of a disbursement schedule and loans register;
- (b) preparation of a loan field report form;
- (c) preparation of an itinerary for the field visits;
- (d) preparation of monthly field visit reports.

21. (1) A loan shall be considered delinquent when a loanee fails to repay two monthly installments. Delinquency and default.

(2) A loan shall be considered to be in default when a loanee fails to repay three monthly installments and any efforts to make him or her repay have been futile.

(3) Where delinquency or default has been noted, the Board secretary shall visit the loanee's enterprise to seek an explanation, and if payment is not done within 14 days of the said visit, a demand notice shall be issued and legal action instituted where necessary.

(4) In case of delinquency with no subsequent satisfactory explanation, the Fund administrator shall have a right to recall the loan.

22. (1) There shall be regular portfolio analysis and regular reports issued from the Board to the Executive Member to ensure effective control of operations that will inform decision making. Portfolio analysis.

(2) The reports to be issued will include but will not be limited to—

- (a) Number of loans issued;
- (b) Amounts disbursed in the form of loans;
- (c) Number of loans outstanding;
- (d) Number and amounts of loans in default;

23. The Board shall carry out remedial action on all problematic loans to prevent the loss of resources which action shall include rescheduling of loans, exercising right of lien over securities charged or litigation as shall be necessary in accordance to the Board secretary's analysis report. Remedial action.

PART V— FINANCIAL PROVISIONS

24. (1) The Board shall—

- (a) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (b) open and maintain a bank account of the Fund in a commercial bank approved by the executive member for finance;

Fund administration.

- (c) prepare, sign and transmit through the executive member for finance to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the executive member for finance may from time to time direct.

(2) The expenditure for running the Board and related purposes shall be set aside at the beginning of the financial year and not more than five per centum of the total allocation to the Fund in the financial year may be used for this purpose, the annual budget of which shall be approved by the executive member.

25. The Fund Administrator shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of every transaction under this Act and shall—

Records of receipts and disbursements.

- (a) table such record at each quarterly meeting of the Board; and
- (b) submit a summary of the record for the year to the Executive Member not later than thirty days after the end of each financial year.

26. (1) For the purpose of disbursement of funds under this Act, the Board shall maintain a Fund account at any commercial bank approved by the executive member responsible for finance.

Trade Development Revolving Fund account.

(2) All funds disbursed to the Department of Trade for purposes of this Act shall be kept in the account.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from the Fund account and the signing instructions shall be such that there shall be a signature of the Fund administrator, a signature of the Chief Officer in the Department of Finance or one person from the department duly appointed by him and a signature from at least one member of the Board.

(4) The Fund administrator shall, with the authority of the Board, have the power to incur expenditure of the funds at the account.

(5) The Board shall ensure that any decision or resolution for payment or instruction for payment out of the account is recorded in the minutes of the Board.

(6) All receipts, savings and accruals to the account and the balances thereof at the end of each financial year shall be returned to the Account.

PART VI—MISCELLANEOUS

27. (1) A Board member shall not use his or her position to— Offences and penalties.

- (a) improperly enrich him/herself or other using the Fund;
- (b) advance loans to him/herself, business associates, a corporation, partnership or any other body that the member has an interest;
- (c) accept gifts or favours from a person who has interests that may affect execution of his/her duties;
- (d) divulge the Board's information to unauthorized persons.

(2) Any persons who commits any of the above is guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of two years imprisonment or to both such fine and term.

28. (1) All complaints and disputes by persons arising due to the administration of this Act shall be referred to the Board. Dispute resolution.

(2) The executive member shall prescribe dispute resolution mechanisms.

29. (1) The Executive Member shall make regulations generally for the better carrying out of the objects of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for the following—

- (a) the fee payable by loan applicants; and
- (b) the insurance to be taken up by loanees.

FIRST SCHEDULE

[s. 14 (1)]

TRADERS LOAN APPLICATION FORM

BARUA YA MKOPO KWA WAFANYI BIASHARA

Application No.

A. PERSONAL PARTICULARS

MAELEZO KUHUSU MUOMBAJI

1. Full name of Applicant(s).....

(BLOCK LETTERS)

Jina kamili la muombaji/waombaji.....

(HERUFI KUBWA)

2. Applicant's details

I.D No/Namba ya/za kitambulisho.....

Home Sub County/ Eneo bunge.....

Ward/Wadi

Ward Representative/Mwakilishi wa Wadi.....

3. Next of Kin/Mrithi

4. Postal Address/Anwani ya Posta.....

Email address/Barua pepe.....

Telephone Number/Nambari ya simu

5. Level of education/Kiwango cha elimu.....

6. Have you received any business or technical training? /Give details

Umepata eleimu yoyote ya kibiashara au ujuzi wowote wa biashara?
Andika maelezo kamili

.....
.....
.....

7. For how long have you been in business?/ Umekuwa kwa biashara kwa muda gani?

8. Are you in paid employment?/Unayo kazi nyingine unayolipwa mshahara?
.....

9. Other sources of income/Mapato mengine ya kifedha

.....
.....
.....
.....

B. BUSINESS DETAILS/MAELEZO YA BIASHARA

1. Name of Business/Jina la biashara

2. Physical address of business/Anwani ya biashara

Plot No./ Nambari ya Ploti

3. Legal Status (Registered or unregistered)/Biashara imeandikishwa au haijaandikishwa

4. Form of Business (Sole proprietor, Partnership or Limited company)
Give details/Biashara ni ya kibinafsi au umeshirikiana na wengine, andika maelezo.....

5. Name, address and occupation of each partner/Jina, anwani na kazi ya kila mshirika

Nature of trade or business carried on/ proposed by applicant/Aina ya biashara au kazi unayoendesha/ unayotumaini kuanzisha

6. How long has the business been in operation?/Biashara uliyo nayo imedumu kwa muda gani?

7. Number of employees regularly engaged by the business/Kwa kawaida biashara hua inaajiri watumishi wangapi?

8. Average sales per month/Mauzo ya kila mwezi.....

9. Average business expenses per month/Gharama ya biashara ya kila mwezi

10. What is the business monthly profit?/ Faida ya biashara ya kila mwezi

.....
.....

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11. What is the value of the saleable stock?/ Thamani ya bidhaa iliyo kwa biashara

12. Do you own the building in which you conduct the business or is it rented?/Mjengo wa biashara ni mali yako au umekodisha?

13. If the business premises are rented, state name and address of the owner of the premises/Ikiwa umekodisha mjengo, andika jina na anwani ya mwenye mjengo

Monthly rent payable/Malipo ya kodi ya kila mwezi

14. What books of account does the Applicant keep?/ Muombaji huandika vitabu gani vya hesabu?

Do you keep the books yourself/Je wajiandikia vitabu mwenyewe?

15. Do you have a business bank account/Biashara yako iko na akaunti ya benki?

16. Total debts at the time of loan application/Jumla ya madeni ambayo unadaiwa wakati wa kujaza barua hii ya maombi

C. LOAN DETAILS

MAELEZO KUHUSU MKOPO

1. Amount of loan required Kshs./ Kiwango cha mkopo kinachohitajika ni Kshs.

2. What is the purpose of the loan if granted? (give details)/ Madhumuni ya mkopo (toa maelezo kamili)

3. What security will you offer/Utaoa thamani gani?.....

.....
4. Have you applied for or received a loan from any other source during the past two years?/ Umeapata kuomba au kupata mkopo mahali pengine kwa miaka miwili iliopita.....

.....
5. Names, addresses and signatures of two referees/Majina, anwani na sahihi za wathamini wawili

(a) Name and address

Email address

Telephone Number

Signature

(b) Name and address

Email address

Telephone Number

Signature

I understand that—

(i) If I am granted a loan I must continue to maintain acceptable books of accounts; and

(ii) That all facts given above will be verified at my place of business and that my application will be rejected outright if I have given any false information.

Date:

.....20.....

Signature of Applicant

Naelewa hivi

1. Nikipatiwa mkopo ni lazima kuendelea kuweka vitabu vya hesabu vinavyo kubaliwa; na

2. Maelezo yote yalioandikwa hapa juu yatakaguliwa katika biashara yangu, na hivyo barua yangu ya mkopo inaweza kukataliwa kabisa ikiwa nimeandika maelezo ya uongo

Tarehe

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Sahihi ya muombaji

NB – If there is insufficient space on this form to answer all the questions fully, an additional plain sheet should be used.

Iwapo nafasi ya kujibu maswali kamili ndani ya barua hii ni ndogo karatasi nyengine inaweza kutumiwa ili maswali yote yajibiwe.

FOR OFFICIAL USE ONLY

RECOMMENDATIONS

Area Ward Administrator

Trade Development Officer/Secretary:

Amount recommended Kshs.

Name:

.....

Date:

.....

Board's Recommendation:

Amount approved

Signatories: 1. Chairman

2. Secretary

Terms and Conditions

.....

.....

.....

.....

SECOND SCHEDULE

(s. 6 (1))

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The Chairperson or a member of the Board, with the exception of the person appointed under section 5 (3) (e) shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for reappointment for not more than two terms.

Tenure of
office.

2. (1) The chairperson or a member appointed under section 5 (3) may—

Vacation of
office.

(a) at any time resign from office by notice in writing to the Executive Member;

(b) be removed from office by the executive member on recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

(2) The Chairperson shall not be removed from office unless such removal is in accordance with sub-paragraph (1).

3. (1) The Board shall meet not less than four and not more than eight times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding sub paragraph (1), the Chairperson may upon consultation with the secretary of the Board and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

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(4) The quorum for the conduct of the business of the Board shall be five members.

(5) The Chairperson shall when present, preside at every meeting of the Board and the Vice-Chairperson shall preside whenever the Chairperson is absent, and the Vice Chairperson shall have the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine. Committees of the Board.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its meetings.

5. (1) A member who has an interest in any enterprise, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) shall cease to be a member of the Board upon direction of the executive member.

6. Any contract or instrument which, if entered into or Contracts and

executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

instruments.

7. (1) The common seal of the Board shall be kept in the custody of the secretary of the Board and shall not be used except on the order of the Board.

Common seal.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the secretary and one member nominated by the Board and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the secretary and that member nominated by the Board.

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this paragraph shall be presumed to have been duly given.

(4) The provisions of this Schedule shall apply to the conduct of the business of the Board but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.