

SPECIAL ISSUE

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THE HOMA BAY COUNTY TRADE FUND ACT 2015



No. 5 of 2015

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THE HOMA BAY COUNTY TRADE FUND ACT, 2015

**AN ACT of the County Assembly of Homa Bay to
provide for the establishment and administration
of the Traders' Fund and for connected purposes**

ENACTED by the County Assembly of Homa Bay as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Homa Bay County Trade Fund Act, 2015 and shall come into operation on the fourteenth day after its publication in the *County Gazette* and the *Kenya Gazette*.

Short title and
Commencement.

2. In this Act unless the context otherwise requires—

Interpretation.

“Board” means the Homa Bay County Trade Fund Management Board established under section 4 of this Act;

“Chairperson” means the Chairperson of the Board appointed under section 3 of this Act;

“Chief officer” means chief officer in charge of trade affairs;

“County Assembly” means the County Assembly of Homa Bay;

“Executive Committee Member” means executive member in charge of trade affairs;

“Financial Year” means the twelve months ending on the 30th of June each year;

“Fund” means the Homa Bay County Trade Fund established under section 8 of this Act;

“Loanee” means any person granted a trade loan under the Homa Bay County Trade Fund Act or any person granted trade loan by the Department of Trade in Homa Bay County under this Act or any other Act that is in place;

“Secretary” means the Secretary to the Board appointed under section 5 of this Act;

“successful applicant” means any person, who being a permanent resident, has attained minimum entry requirements for the advance of the loan and has been in business for at least six months.

3. (1) There is established a Board to be known as the Homa Bay County Trade Fund Management Board which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

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

4. (1) The Board shall consist of—

Composition of
the Board.

- (a) A Chairperson appointed by the Governor of Homa Bay County with the approval of the County Assembly;
- (b) Chief Officer, Department of Trade Affairs or his representative
- (c) Eight representatives, one from each Sub-County of the Business Community three of whom shall be of either gender;
- (d) The Secretary

(2) The members of the Board referred to in paragraphs (c) shall be appointed by the Executive Committee Member in charge of Trade

(3) The members of the Board other than secretary shall hold office for a period of three consecutive years and are eligible for re-appointment only once.

(4) The Office of a Member of the Board shall fall vacant—

- (a) if not being an *ex officio* member, he/she submits his/her resignation in writing under his/her hand to the appointing authority through the Secretary;

- (b) if the Board is satisfied that such a member is by reason of his/her physical or mental infirmity unable to execute the functions of his/her office
- (c) if he/she has been adjudged bankrupt by a competent court of law or has committed a criminal offence which directly or otherwise reflects adversely on his/her status as a member of the Board;
- (d) upon his/her death; or
- (e) Non-attendance of three consecutive meetings without cause

(5) Where the office of a member becomes vacant under subsection (4), the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.

5. (1) There shall be a Secretary to the Board who shall be a County Trade Officer and shall be appointed by the County Executive Committee Member responsible for Finance and Economic Planning and who shall be the Chief Executive of the Board, the Administrator of the Fund established under section 8 of this Act and shall be responsible for the management of the day-to-day activities of the Board

Secretary to the Board.

(2) The Secretary shall be the one taking minutes and custodian of all other records and shall be responsible to the Board in ensuring that the other staff members satisfactorily carry out duties and perform functions assigned to them by the Board.

(3) The Secretary of the Board shall have no right to vote at the meetings of the Board.

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

Functions of the Board.

- (a) formulate sound policies for regulating the management of the Fund;
- (b) solicit for funds and other assistance to promote the functions of the Board;
- (c) set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans;

- (d) receive any gifts, donations, grants or endowments made to the Board, and to make legitimate disbursements there from;
- (e) establish and maintain links with other persons, bodies or organizations within or outside Kenya, as the Board may consider appropriate for the furtherance of the purposes for which the Board is established;
- (f) enter into contracts with financial institutions for the purpose of loans disbursement and recovery;
- (g) grant loans out of the Fund either with or without security, as the Board may deem fit, to any eligible person to enable him, or assist any trader, to meet the cost of doing business;
- (h) determine the maximum number of eligible businesses to be granted loans in any one particular year;
- (i) invest any surplus funds not currently required for the purpose of the Board in any investment authorized by law for the investment of trust funds with power from time to time to vary or realize those investments;
- (j) with the consent of the Executive Committee Member, to set up and expend such other funds as may from time to time be required;
- (k) receive and consider all loan applications from eligible persons wishing to be considered for the award of loans, and to approve, withhold or reject such requests in accordance with the provisions of this Act
- (l) borrow such monies from such sources and in such amounts as may be approved by the Executive Committee Member with the concurrence of the Board and to secure such loans in such manner as they deem fit;;
- (m) take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;
- (n) perform any other functions relating to the granting of Traders' loans in accordance with the provisions of this Act; and

- (o) perform and exercise all other functions and powers conferred on the Board by this Act.

7. (1) The Chairperson shall call for and preside at all the meetings of Board unless he/she is absent from a particular meeting in which case the members present shall elect one of themselves to preside at that particular meeting or part thereof.

Meetings of the Board.

(2) The Board shall meet at least four times in each year, but the Chairperson shall, upon requisition in writing by at least five members, convene a special meeting of the Board at any time.

(3) The quorum necessary for transaction of the business of the Board shall be two thirds of the board members:

Provided that the quorum at any requisitioned meeting shall be any number of the members of the Board entitled to attend such meeting and the meeting shall be free to adopt any procedure thereat suitable in the circumstances

(4) All questions at any meeting of the Board shall be determined by a simple majority of the votes of the members present and voting

(5) The Chairperson shall, in case of equality of votes, have an original and a casting vote

(6) The Secretary shall cause minutes and proceedings of all the Board's meetings to be entered into the Minute-Book kept for that purpose.

(7) Subject to this Act, the Board shall regulate its own proceedings

PART III—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

8. (1) There is hereby established a Fund to be known as the Homa Bay County Traders' Fund.

Establishment of the Fund.

(2) The object and the purpose of the Fund shall be to provide funds to be used for granting loans to assist traders living in Homa Bay County to promote their businesses at such a cost which is affordable within the County.

9. (1) There shall be credited to the Fund—

Revenue and Expenditure of the Fund.

- (a) sums of money which may from time to time be voted by county assembly for that purpose;

- (b) sums which represent the repayment of the capital and interest of any loan granted by the Board;
- (c) income from any investment made by the Board
- (d) Any gifts, donations, grants and endowments made to the Fund

(2) There shall be paid out of the Fund any expenditure approved by the Board and incurred in connection with the administration of the Fund.

10. (1) Every Trader wishing to be considered for the grant of a loan shall make an application to the Board in the prescribed form.

Administration of
the Fund.

(2) Every Trader who has been awarded a Traders Loan shall be issued with a Loanee Identification File Number by the Board.

(3) Any Applicant who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his request for a loan; or
- (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or

(c) is granted a loan based on false information,

shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a penalty which include rejection of the application.

11. (1) The Board may—

Conditions for
grant of Loan.

- (a) accept or reject any application for a loan;
- (b) grant a loan to any trader and in so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Board deems fit

(2) Where the Board has resolved to make a loan to any eligible applicant, the Board shall notify the applicant in writing or by phone and require him/her within a specified period to comply with any conditions and provide

any security which the Board may have imposed or demanded

(3) Where any applicant fails to comply with the requirement of the Board notified to him/her under sub-section (2) within the prescribed period, the application shall be deemed to have lapsed.

(4) Where in granting a trader's loan to any applicant the Board considers it prudent to request for a guarantor to guarantee any loan granted to a trader, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.

(5) Where a guarantor who has been notified by the Board under sub-section (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to civil proceedings in accordance with the provisions of this Act.

12. (1) A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder—

Obligation of
Loanee.

- (a) To inform the board of his contact address
- (b) To begin repayment of his loan together with any interest accrued thereon
- (c) To provide security or guarantee for the loan
- (d) Must maintain financial records
- (e) provide their credit history
- (f) (2) For purposes of 1(c) security here will include—
 - (a) Land title Deed
 - (b) Guarantee by salaried persons of recognized reputable institutions
 - (c) Group co-guarantee mechanism
 - (d) Car Log Book

13. (1) If in the opinion of the Board there has been or is likely to be any breach of or failure to comply with any condition or term of repayment respecting a loan the Board may forthwith—

(a) recover from the person from whom the loan was made or his personal representative as a civil debt under the Debts (Summary Recovery) Act (Cap. 42) the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;

(b) Enforce or realize any security or guarantees relating thereto

(2) The Board may, in exercise of the powers conferred by sub-section (1), engage the services of private debt collector.

PART IV—FINANCIAL PROVISIONS

14. (1) The Board shall submit to the Executive Committee Member an estimate of its income and expenditure during the succeeding financial year one month before the commencement of the financial year.

Annual Estimates.

(2) The Executive Committee Member shall communicate to the Board his approval of the annual estimates at least one calendar month after the commencement of the financial year.

(3) The annual estimates shall make provisions for all the estimates of expenditure of the Board for the financial year and shall provide for—

(a) the cost of administration of the Board including payment of allowances, and other charges whatsoever payable to the staff and members of the Board;

(b) the payment or reimbursement to the members of the Board of monies in respect of expenses incurred during the attendance of the meetings of the Board;

(c) the development and maintenance of any property vested in the Board.

(4) Except with the approval of the Committee Member in charge of trade, no expenditure shall be

incurred for the purposes of the Board except in accordance with the annual estimates approved under sub-section (2).

15. (1) The Board shall cause to be kept—

Book of Accounts and Audits.

- (a) all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund
- (b) a balance sheet showing in detail the assets and liabilities of the Board at the end of the financial year;
- (c) a statement of financial activities, income and expenditure during the financial year; and
- (d) Other statements of accounts as may be necessary to fully disclose the undertaking, assets, liabilities and discharge of the functions of the Board.

(2) Not later than three months after the end of each financial year, submit the accounts of the Board to the Auditor-General.

(3) The Board shall ensure that the accounts for the fund and the annual financial statements relating to the accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

16. The Board shall, within three months after the end of each financial year, prepare a report on the operation of the Fund during that financial year and shall transmit such report to the Executive Committee Member who shall cause it to be presented to the County Assembly together with the report of the Auditor-General and certified copies of the accounts referred to in this section.

Annual Reports of the Board.

17. Thirty days after the end of each calendar year the Board shall send to Executive Committee Member an annual return.

Annual Returns.

PART V—MISCELLANEOUS PROVISIONS

18. (1) Any person having an official duty or being employed in, or in connection with, the administration of this Act shall regard and deal with all documents, information, returns and forms relating to applications for loans or to the granting of loans under this Act as secret and confidential.

Secrecy.

(2) Any person having possession of, or control over, or access to, any documents, information, returns or forms relating to a matter referred to in sub-section (1) who communicates anything contained therein—

- (a) to any person other than a person to whom he is authorized by the Board to communicate it; or
- (b) otherwise than for the purposes of this Act,

Shall be guilty of an offence.

19. No matter or thing done by the Chairperson or any member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done bona fide for the purpose of executing any provision of this Act, render the Chairman, Member, Officer, employee or Agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

Protection from
personal Liability.

20. The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him/her, his/her property or any of his/her interest caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially of the exercise of such powers.

Liability of the
Board for
damages.

21. (1) The County Executive Member for Finance and Economic Planning may wind up the fund with the approval of the County Assembly.

Winding up of the
Fund.

(2) On winding up the fund—

- (a) the Administrator of the Board shall pay any amount remaining in the fund into the County Exchequer Account
- (b) the County Executive Committee Member for Finance and Economic Planning shall with the approval of the County Assembly, pay any deficit in the fund from the County Exchequer Account.

22. (1) The Executive Committee Member may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, the Executive Committee Member may make regulations in respect of the following—

Regulations.

- (a) the receipt, processing and approval of applications for loans and the granting of loans to Traders;

- (b) the preparation and maintenance of loanees' records;
- (c) the withdrawal, recovery and cancellation of loans already granted;
- (d) the terms and conditions of service for the Board's staff;
- (e) the setting-up of procedures for dealing with loan defaulters.

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