

SPECIAL ISSUE

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KAKAMEGA COUNTY ACTS, 2018

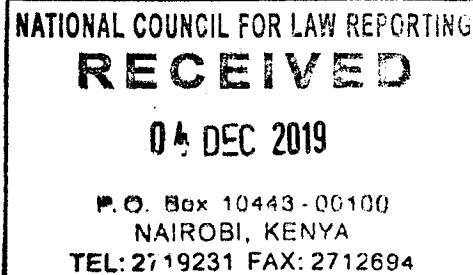
NAIROBI, 4th July, 2018

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**THE KAKAMEGA COUNTY DAIRY DEVELOPMENT
CORPORATION ACT,**

No. 1 of 2018

Date of Assent: 27th June, 2018

Date of Commencement: See Section 1

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BUSINESS AND AFFAIRS OF THE
BOARD OF THE CORPORATION**

2018

Kakamega County Dairy Development Corporation

**THE KAKAMEGA COUNTY DAIRY DEVELOPMENT
CORPORATION ACT, 2018**

AN ACT of the County Assembly of Kakamega county to provide for the establishment of the Kakamega County Dairy Development Corporation, to make provision for the role of the corporation in the dairy industry in the county and related matters in furtherance of the Fourth schedule of the Constitution and for connected purposes

ENACTED by the County Assembly of Kakamega, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Dairy Development Corporation Act, 2018 and shall come into operation upon publication.

Interpretation

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

“board” means the Board of the corporation established under section 6 of the Act;

“chief officer” means the accounting officer in the county department responsible for livestock;

“county” means Kakamega county;

“corporation” means the Kakamega County Dairy Development Corporation established under section 4 of the Act;

“dairy livestock” means cattle, sheep, goats, camels and any other animal which the Executive committee member may by order in the gazette declare to be dairy livestock for the purpose of this Act;

“dairy produce” includes milk, cream, butter, cheese, ghee and any other product or by product of milk;

“dairy value chain” means activities performed in the dairy industry in order to deliver valuable products or service for the market and include production, transportation, processing and marketing;

“executive committee member” means the Executive committee member responsible for livestock development;

“farm in the box” means a state of the art dairy technology with capability to observe milk production in real time through customised

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smart internet application that combines a zero grazing unit housing twenty five pedigree dairy animals with inbuilt milking machines;

“milk” means milk from a dairy livestock;

“one cow initiative” means a programme where individual farmers and cooperative societies are trained in dairy management following which they are given dairy animals to improve dairy productivity and income at household level.

Object of the Act

3. The object of the Act is to—

- (a) establish the Kakamega County Dairy Development Corporation; and
- (b) provide a legal framework for dairy value chain development in the county.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE CORPORATION

Establishment of the corporation

4. (1) There is established a corporation known as the Kakamega County Dairy Development Corporation.

(2) The corporation 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 and disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) purchase, acquire and hold interest on behalf of the county government;
- (e) entering into contracts; and
- (f) doing such other things as may be necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

Functions of the corporation

5. The corporation shall—

- (a) engage in the commercial rearing and breeding of dairy livestock;

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- (b) develop, promote and adopt the best practices in the dairy value chain;
- (c) create a ready market for milk for dairy farmers;
- (d) develop and maintain a milk processing plant in the County;
- (e) undertake and promote research in the field of dairy farming in partnership with other relevant organisations;
- (f) promote or assist in the setting up of dairy training facilities;
- (g) provide advisory services to actors in the dairy value chain;
- (h) implement and manage the dairy livestock incentives initiatives through cooperative societies;
- (i) facilitate and negotiate concessions for dairy farm inputs;
- (j) facilitate acquisition of farm inputs and machinery subsidy;
- (k) carry out such other functions as may be assigned to it under this Act or any other law; and
- (l) promote dairy cooperative activities within the County.

Board of Management

6. (1) The management of the corporation shall vest in the Board which shall consist of—

- (a) a non-executive chairperson appointed by the governor;
- (b) accounting officer for the county department responsible for livestock development;
- (c) chief officer responsible for finance;
- (d) county attorney;
- (e) chief executive officer who shall be an ex officio member;
- (f) three members with relevant qualifications appointed by the Executive Committee Member.
- (g) one person nominated by Dairy Farmers Cooperatives in the county and appointed by the Executive Committee Member.

(2) In making the appointments under sub section (1), the governor in the case of chairperson or the Executive Committee Member in the case of members appointed under sub section 1(f) shall take into consideration gender and regional balance.

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(3) The chairperson and the members of the Board shall be appointed by the governor and the Executive Committee Member respectively from a list consisting of—

- (a) in the case of the chairperson, three names; and
- (b) in the case of members, eight names, submitted by a selection panel appointed by the Executive Committee Member in accordance with subsection (4)

(4) The selection panel referred to in subsection (3) shall comprise of a chairperson and four other persons appointed by the Executive Committee Member as follows—

- (a) one person to represent the County Public Service Board;
- (b) one person to represent dairy farmers in the county;
- (c) one person to represent cooperatives movement in the county; and
- (d) one person to represent the county government department responsible for livestock;
- (5) The selection panel shall regulate its own procedure.

(6) The selection panel shall advertise the vacancies and publicize the names of applicants and shortlisted candidates in at least one local daily newspaper and on the county government website.

(7) In determining the nomination criteria for the chairperson and members of the Board, the selection panel shall have regard to the objectives of the development of the dairy industry in the county.

(8) In nominating the chairperson and members of the Board, the selection panel shall ensure that those nominated shall not have conflict of interest in serving as chairperson and members of the Board.

(9) If the governor rejects the names submitted under subsection (3)(a) or the executive committee member rejects the names submitted under subsection (3)(b) the governor or the executive committee member, as the case maybe, shall inform the selection panel within seven days and request the panel for a replacement within twenty one days.

(10) In rejecting the names submitted under subsection (3), the governor or the executive committee member, as the case maybe, shall attach a memorandum giving reasons for the rejection of the candidates.

(11) The selection panel shall stand dissolved after the appointment of the chairperson and members of the Board.

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Qualifications of chairperson and member of the Board

7. (1) A person shall be qualified for appointment as chairperson of the Board if the person —

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years experience in management;
- (c) meets the requirements of chapter six of the Constitution;

(2) A member of the Board appointed under subsection (1)(f) shall hold at least a degree from a university recognized in Kenya, and at least five years' experience in leadership, management or any other relevant qualifications.

(3) The term of office for chairperson and members of the board shall be three years and may be renewed for one further term.

(4) Notwithstanding the provisions of subsection (3) the executive committee member shall before appointment of the members of the Board in sub section (1)(f) determine by lot which one of their number shall vacate office after a period of two years to ensure continuity in the activities of the Board.

(5) All appointments under this section shall be by notice in the *Gazette*.

Secretary to the Board

8. (1) The Board shall appoint a suitably qualified person under the Certified Public Secretaries of Kenya Act Cap 534 to be the secretary to the Board.

(2) A person appointed as secretary of the Board shall serve for a renewable term of five years subject to satisfactory performance.

Vacancy in Office of Chairperson or Member of Board

9. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (a) resigns by notice in writing addressed to the appointing authority;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;

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- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) if chairperson is absent without the permission of the executive committee member or if member is absent without the permission of the chairperson for three consecutive meetings;
- (f) fails to meet the requirements of chapter six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period exceeding six months; or
- (h) dies.

(2) Where the office of chairperson or member of the Board becomes vacant, the governor in the case of chairperson or the executive committee member in the case of member may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the provisions of subsection (2) a vacancy in the office of the chairperson or member shall not render decisions of the Board invalid.

(4) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapter 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(5) Where a person who has vacated office under subsection (4) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of chairperson or member as the case may be.

(6) The First Schedule shall apply with respect to the conduct of the business and affairs of the Board.

Power of the governor to issue directions and remove Board

10. (1) The governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform

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with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the governor may on the recommendation of the Executive Committee, if it is determined that the Board has failed to carry out its functions in the interest of the county, revoke the appointment of the chairperson and members and dissolve the Board and may himself or herself constitute an interim Board for a period not exceeding six months as he or she shall, in consultation with the Executive Committee determine.

Allowances

11. The chairperson and members of the Board shall be paid such allowances as the Executive Committee shall determine in line with the guidelines set by the Salaries and Remuneration Commission.

Chief Executive Officer

12. (1) There shall be a chief executive officer of the corporation who shall be appointed by the governor from among three nominees recommended by the Board who shall serve for a period of four years which term may be renewed once upon satisfactory performance.

(2) The power of the Board to recruit and recommend three nominees for the position of chief executive officer under sub section (1) shall be subject to powers of the County Public Service Board under section 6(3) of the Kakamega County Public Service Board Act, 2018.

(3) The Chief Executive Officer shall be the accounting officer of the corporation and shall be responsible to the Board for the day to day management of the affairs of the corporation on such terms and conditions of service as Board shall determine in line with the guidelines set by the Salaries and Remuneration Commission.

Qualification of the Chief Executive Officer

13. A person shall qualify for appointment as a chief executive officer, if the person—

- (a) possesses a bachelors degree from a university recognized in Kenya;
- (b) has at least seven years' relevant experience in management; and
- (c) meets the requirements of chapter six of the Constitution.

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Removal from office of Chief Executive Officer

14. The Chief Executive Officer may be removed from office by the Board if he or she—

- (a) is incapacitated by physical or mental illness;
- (b) is guilty of gross misconduct;
- (c) is incompetent or has neglected his or her duties;
- (d) has been adjudged bankrupt or enters into a composition or scheme of arrangement for the benefit of creditors;
- (e) fails to comply with the provisions of chapter six of the Constitution;
- (f) is found culpable on any other ground that would justify removal from office under the terms and conditions of service provided such removal process shall be in compliance with Articles 47 and 50 of the Constitution.

Other staff of the Corporation

15. (1) Subject to powers of the County Public Service Board under section 6(3) of the Kakamega County Public Service Board Act, 2018, the Corporation may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act.

(2) The County Public Service Board shall determine the remuneration of the other employees of the Corporation in line with the guidelines set by the Salaries and Remuneration Commission.

(3) All appointments under this section shall take into account gender equity and regional balance.

Seal of the Corporation

16. (1) The common seal of the corporation shall be kept in the custody of the chief executive officer or such other person as the Board may direct and shall not be used except upon the order of the Board.

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

(3) The common seal of the corporation shall be authenticated by the signature of the chairperson of the Board and the chief executive officer.

(4) The Board shall in the absence of either the chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the board to authenticate the seal of the corporation on behalf of either the chairperson or the Chief Executive Officer.

Personal liability

17. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the corporation shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the corporation under this Act, render the member, officer, employee or agent or any other person acting on their directions personally liable to any action, claim or demand whatsoever provided that the action was done in accordance with this Act.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court or tribunal in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court or tribunal holds that such act was done bona fide, be paid out of the funds of the corporation.

(3) Any negligent or reckless acts or omissions that subject the corporation to loss may in addition to sanctions by the Corporation attract prosecution under the relevant law.

Liability to pay damages

18. The provisions of section 17 shall not relieve the corporation of the liability to pay compensation or damages to any person for injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or other written law or by the failure, wholly or partially, of any works that may be lawfully awarded.

PART III—FINANCIAL PROVISIONS OF THE CORPORATION

Funds of the corporation

19. The Funds of the corporation shall consist of—

- (a) monies appropriated by the county assembly for the purposes of the corporation;
- (b) fees and charges for services rendered by the corporation;
- (c) such monies as may be lawfully earned from income generating activities;
- (d) grants and donation to the corporation; and
- (e) any other lawful source.

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Financial year

20. The financial year of the corporation shall be the period of twelve months ending on the thirtieth June of each year.

Annual estimates

21. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the corporation for the financial year concerned and in particular, shall provide for—

- (a) the operations of the corporation;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the corporation;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the corporation;
- (d) the maintenance of the assets of the corporation;
- (e) the funding of operations, training, research and development activities of the corporation; and
- (f) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board, may deem fit.

(3) The annual estimates shall be approved by the Executive Committee Member, before the commencement of the financial year to which they relate after the Executive Committee Member has given approval, the Board shall not increase any sum provided in the estimates without the consent of the Executive Committee.

Accounts and Audit

22. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the corporation.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the corporation in respect of that year together with—

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- (a) a statement of the income and expenditure of the corporation during that year; and
- (b) a statement of the assets and liabilities of the corporation on the last day of that financial year.

(3) The annual accounts of the corporation shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

Reports

23. (1) The Board shall prepare quarterly reports on the operations and administration of the corporation and provide to the executive committee member quarterly statements.

(2) Notwithstanding sub-section (1) the Board shall prepare monthly reports and financial statements on the operations and administration of the corporation and submit the same to the executive committee member.

(3) Within ninety days after the end of the financial year, the Board shall furnish the executive committee member, with an annual financial report of the corporation for that year.

(4) Upon receipt of the annual report under subsection (3), the executive committee member shall, in line with the budget cycle, transmit the same to the county assembly for tabling and debate.

PART IV—MISCELLANEOUS

Partnerships

24. The corporation may enter into partnerships with any person in order to effectively carry out its functions subject to approval by the executive committee.

Regulations

25. The executive committee member may make regulations generally for the better carrying out of the provisions and purposes of this Act.

Saving and Transitional provisions

26. (1) The corporation shall be the successor to Kakamega County Dairy Development Company Limited in respect of all rights, duties, obligations, assets and liabilities concerning Kakamega County Dairy Development Company Limited existing at the date of commencement of this Act.

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(2) All such rights, duties, obligations, assets and liabilities shall be automatically and fully transferred to the corporation and any reference to the county government or the Executive Committee Member or the chief officer responsible for livestock or the Board or the chief executive officer in relation to Kakamega County Dairy Development Company Limited in any written law or in any contract or document shall for all purposes be deemed to make reference to the corporation under this Act.

(3) Any person who at the commencement of this Act is a member of staff of Kakamega County Dairy Development Company Limited shall on commencement of this Act become a member of staff of the corporation on the same or improved terms and conditions of service as may be specified by the County Public Service Board in line with guidelines set by the Salaries and Remuneration Commission;

Provided that—

- (a) any such member of staff may retire on the basis of abolition of office in accordance with this Act; or
 - (b) any such member of staff may be deployed in the county public service with mutual consent of any such member and the county government.
- (4) Any person who at the commencement of this Act is a chairperson or member of the Board of Kakamega County Dairy Development Company Limited shall on commencement of this Act continue in office until his or her current term of appointment expires.

FIRST SCHEDULE

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

1. The Board shall meet once in every three months.
2. The chairperson may call for a special meeting of the Board provided such meetings shall not exceed six in a financial year.
3. The chairperson shall preside at every meeting of the Board at which he or she is present, but in the absence of the chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Board shall be five members which must include the chief executive officer.
5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.
8. The Board may constitute specialised sub committees provided that the decisions of the sub committees shall be subject to the approval of the Board.
9. The Chief Executive Officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a sub committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the sub committee, as the case may be, passes a resolution, which in the chief executive officer's or officer's opinion, is contrary to his or her advice or contrary to law.
10. Save as provided in this schedule the Board may regulate its own procedure.

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