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THE KISUMU COUNTY ENTERPRISE FUND ACT, 2018

No. 5 of 2018

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THE KISUMU COUNTY ENTERPRISE FUND ACT 2018

AN ACT of the County Assembly of Kisumu to provide for the establishment of the county enterprise fund for the promotion of enterprise development and for related purposes

ENACTED by the County Assembly of Kisumu as follows—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Kisumu County Enterprise Fund Act, 2018.

Interpretation

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

“Committee” means the County Enterprise Fund Committee established under section 6;

“Executive Member” means the County Executive Member for the time being responsible for matter of enterprise development;

“Fund” means the Kisumu County Enterprise Fund established under section 4.

“Enterprise” means an undertaking or a business concern whether formal or informal engaged in production of goods or provision of services.

“Micro enterprise” means a firm, business, service, cooperative society, industry or a business activity—

- (a) Whose annual turnover does not exceed five hundred thousand shillings
- (b) Which employs up to ten people; and
- (c) Whose total assets and financial investment shall be as determined by the Member of the Executive Committee from time to time, and includes—
 - (i) The manufacturing sector, where the investment in plant and machinery or a registered capital of the enterprise does not exceed ten million shillings’

- (ii) The service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings;

“Small Enterprise” means a firm, trade, service, industry or a business activity —

- (a) Whose annual turnover ranges between five hundred thousand and fifty 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 Member of the Executive Committee from time to time, and includes —
 - (i) 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;
 - (ii) Service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five and fifty million shillings.

Purpose of the Act

3. The purpose of this Act is to provide for the legal framework for establishing a Fund for enterprise development in order to-

- (a) Facilitate access to credit for business capital;
- (b) Promote enterprise development among youths, women, and persons with disabilities and needy persons;
- (c) Facilitate the development of conducive and appropriate Business
- (d) Enhance access to employment;
- (e) Enhance enterprise skills development;
- (f) Promote economic growth
- (g) Ensure equal and fair treatment of micro, Small, and medium entrepreneurs in accessing loans
- (h) Promote industrialization through financing of value addition
- (i) Access to finance for promotion of innovative enterprises

PART II – THE COUNTY ENTERPRISE FUND

Establishment of the Fund

4. (1) There is established a Fund to be known as the Kisumu County Enterprise Fund.

(2) The Fund shall consist of—

- (a) Such monies as may be appropriated by the County Assembly;
- (b) Sums received as contributions, gifts or grants from any lawful source;
- (c) Monies earned or arising from any investment of the Fund;
- (d) Any money that may be payable or vested in the Fund

(3) The Fund shall be used for supporting Small and Medium enterprises—

- (a) Providing affordable loans or credit for business capital to persons as stipulated.
- (b) Providing training and skills development related to enterprise and business development;
- (c) Providing technical assistance in product and market development;
- (d) Facilitating technology acquisition, Adoption and utilization;
- (e) Provided that not more than three per cent of the total monies consisting of the Fund shall be utilized for administration of the Fund.

(4) An amount not less than twenty five percent shall be utilized for funding activities under subsection (3) (b), (c) and (d).

(5) The County Assembly may appropriate specific amounts to be allocated to each of the categories provided for under section 10.

(6) The amount set aside for disbursement as loans may be allocated as per Wards.

Administration of the Fund

5. (1) The fund shall be administered by a County Officer designated for that purpose by the County Executive Committee member responsible for finance.

(2) The Chief Officer shall—

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- (a) Supervise and control the administration of the Fund;
- (b) Be the accounting officer of the Fund;
- (c) Prepare a budget and such plans for better administration of the Fund to be approved by the County Executive Committee;
- (d) Impose conditions or restrictions on the use of any expenditure arising from the Fund;
- (e) 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
- (f) Prepare, sign and transmit to the Auditor General in respect of each financial year and within three (3) 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 County Treasury may from time to time direct;
- (g) Furnish such additional information as may be required for examination and audit by the Auditor-General or under any Law; and
- (h) Designate such staff as may be necessary to assist in the management of the Fund.

County Enterprise Fund Committee

6. (1) There is established the Kisumu County Enterprise Fund Committee.

2. The Committee shall consist of—

- (a) The Chair person elected by the Enterprise fund Committee members.
- (b) The Chief Officer for the time being responsible for enterprise development;
- (c) The Chief Officer for the time being responsible for finance;
- (d) The Chief officer for the time being responsible for youth affairs;
- (e) The Chief officer for the time being responsible for trade affairs;
- (f) the Director for the time being responsible for enterprise development who shall be the secretary.

Functions of the Kisumu County Enterprise Fund committee

7. (1) The committee shall be responsible for—

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- (a) Providing overall management and oversight of the Fund;
- (b) Advising the Executive Member on the appropriate guidelines and procedures for better management of the Fund;
- (c) Approving disbursements or utilization of the Fund;
- (d) Preparing annual report on the implementation of the Fund for transmission to the Executive Member;
- (e) Advising the Executive Member generally on implementation of this Act.

(2) The Secretary shall provide the Secretariat services to the Committee.

Conduct of the Business

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

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

Remuneration

9. The Allowances

10. of the members of the Committee shall follow guidelines as provided for by the SRC.

PART III — ACCESS AND UTILIZATION OF THE FUND

Eligibility for accessing the Fund

10. (1) For a person to be eligible for accessing a loan under this Act, the person must be—

- (a) A youth, woman or a person with disability; and
- (b) Operating a micro or Small enterprise or intending to start operating a Business which is a micro or small enterprise.

(2) Notwithstanding subsection (1) (a) may be eligible for accessing loan under this Act if the person is needy, operate a Small or Medium enterprise and meets the prescribed conditions.

Accessing the Fund

11. (1) A person who qualifies for funding under Section 10, may apply for a loan to the Committee in the prescribed for and in accordance with the prescribed conditions.

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(2) An application for a loan may be made by an individual or a group of persons subject to the prescribed conditions: Provided that the conditions shall not be prohibitive to accessing the funds by the intended beneficiaries.

(3) The Executive Member shall, in consultation with the Committee prescribe the limits of amounts that can be disbursed as a loan to an applicant.

(4) The Committee may, where an applicant meets the prescribed conditions—

(a) Approve the loan application; or

(b) Reject the loan application and give reasons to the applicant.

(5) Notwithstanding subsection (2), a loan shall not be disbursed to an applicant unless the applicant has undergone through the prescribed training.

Loan repayment

12. (1) The Committee shall, in consultation with the Executive Member establish loan repayment conditions.

(2) The County Executive Committee shall set the interest rates chargeable for a loan disbursed under this Act. The interest rate shall be 8% (percent) per annum on reducing balance.

(3) In establishing the amount repayable by an applicant, the Committee may charge a fee for insuring the loan.

(4) The security of the loan shall be provided in the Kisumu County Enterprise Regulations, 2018.

Appointment of Financial Institution

13. (1) The County Executive Committee may appoint a financial institution to administer the Fund on its behalf for the purposes of managing the loan applications and repayments.

(2) The financial institution appointed under subsection (1) may charge a higher interest rate than the one set under section (12) upon approval by the County Executive Committee.

(3) The County Executive Committee shall make provision to pay the financial institution for administration of Fund.

14. (1) A loan granted under this Act shall only be used for financing an enterprise or business undertaking that was approved by the Committee at the time of application for loan.

(2) A person who utilizes a loan granted in non-enterprise or business undertaking shall be disqualified from accessing the loan under this Act.

Strategic Plan

15. (1) The Committee shall prepare a three-year strategic plan for implementation of this Act which shall be approved by the County Executive Committee.

- (2) The plan shall provide among others for—
 - (a) Projects, strategies and activities projected to be funded under section 4 (3) (b), (c) and (d) and estimated costs.
 - (b) Estimated number of businesses or enterprise targeted to be funded under the Act.
 - (c) Strategies to be pursued in regard to mobilization of target group provided under section 10;
 - (d) Any other matter that may be prescribed.

Funding of projects

16. The Committee shall not fund a project under section 4 (3) (b), (c) and (d) unless the project is provided for in the strategic plan prepared under section 15.

Partnerships

17. The Committee may collaborate, consult or enter partnership with other government or private entity for the purposes of implementing this Act.

Annual Forum

18. (1) The Committee shall convene an annual forum for all beneficiaries under this Act.

(2) The forum shall provide a platform for reviewing and evaluating the funding under this Act.

Annual Report

19. (1) The Committee shall prepare an annual report which shall be submitted to the County Executive Committee and thereafter transmitted to the County Assembly for consideration.

- (2) The report shall provide among others for—
 - (a) Performance of the Fund against the set targets;
 - (b) Types of businesses or enterprises funded under this Act;
 - (c) The number of beneficiaries disaggregated in accordance to

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- gender and Ward;
- (d) The rate of repayment of loans disbursed;
 - (e) Challenges faced in the implementation of this Act and mitigation measures taken;
 - (f) The success rate of businesses or enterprises funded under this Act;
 - (g) Any other matter that may be prescribed.

PART IV — GENERAL PROVISIONS

Regulations

20. (1) The Executive Member may, in consultation with the committee make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may —

- (a) Prescribe the criteria for accessing the Fund;
- (b) Prescribe the conditions imposed on accessing and repayment of the loans;
- (c) Prescribe the limits of amounts that can be disbursed as loan to an applicant;
- (d) Prescribe the training to be offered to persons applying for funding under this Act;
- (e) Prescribe the forms.

SCHEDULE

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

Vacation of Office

1. A member of the Committee may —
 - (a) Be removed from office by the executive member if the person —
 - (i) Is convicted if a criminal offence and sentenced to imprisonment for a term exceeding six (6) months or to a fine exceeding ten (10) thousand shillings.
 - (ii) Is convicted of an offence involving dishonesty or fraud;
 - (iii) Is incapacitated by prolonged physical or mental illness in us deemed otherwise unfit to discharge his duties as a member of the Committee; or
 - (iv) Fails to comply with the provisions of this Acts.

Meetings

2. (1) The Committee shall meet not more than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting

(2) Notwithstanding the provisions of sub-paragraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Committee at any time for the transaction of the business of the Committee

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

(4) The quorum for the conduct of the business of the Committee shall be five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Committee at which he is present but, in his/her absence, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson

or the person presiding shall have a casting vote.

(7) Subject to Sub-paragraph (4), no proceedings of the committee shall be invalid by reason only of a vacancy among the members thereof.

Conflict of Interest

3. (1) If a member is directly or indirectly interested in an outcome of any decision of the Committee or other matter before the Committee and is present at a meeting of the Committee at which the matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the committee may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A member of the Committee shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Committee.

(3) Where the Committee becomes aware that a member has a conflict of interest in relation to any matter before the Committee, the Committee shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(5) Upon the Committee becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Committee and the member with the conflict of interest shall not vote on this determination.

(6) Where the Committee determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in sub-paragraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Committee within thirty (30) days.

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(7) The Committee shall report to the executive member any determination by the Committee that a conflict is likely to interfere significantly with performance as above, and whether or not the conflict has been eliminated to the satisfaction of the Committee.

(8) The annual report of the Committee shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the committee who contravenes sub-paragraph (1) commits an offence and is liable to imprisonment for a term not exceeding six (6) months, or to a fine not exceeding twenty (20) thousand shillings, or both.

Code of Conduct

4. The committee shall comply with the code of conduct governing public officers.

Minutes

5. The committee shall cause minutes of all resolutions and proceedings of meetings of the Committee to be entered in books kept for that purpose.