

SPECIAL ISSUE

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**KISUMU COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2015

NAIROBI, 6th July, 2015

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NAIROBI, KENYA

2015

Kisumu County Investment and Banking

THE KISUMU COUNTY INVESTMENT AND BANKING ACT, 2015

No. 4 of 2015*Date of Assent: 29th June, 2015**Date of Commencement: 6th July, 2015*

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AN ACT of the County Assembly of Kisumu County to establish a Regional Bank for sustainable growth of the County Economy by investing in key Socio-economic sectors and extending access to Finance to the County citizens, equitably and for the matters incidental thereto

ENACTED by the County Assembly of Kisumu as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as Kisumu County Investment and Banking Act, 2015

Commencement

2. This Act shall come into operation on the date of publication in the County Gazette or Kenya Gazette whichever comes first.

Interpretation

3. In this Act unless the context otherwise requires—

“Access to Finance” means the deliberate intent by the county to ensure that the county citizens have equitable access to finance for their businesses.

“Bank” means the Regional Development Bank established under section 2

“Board” means the board of directors established under section 11

“County Flagship Projects” means special projects set aside by the county with the aim of generating quick, broad based economic growth, with sustainable socioeconomic returns.

“Economic Growth Sectors” means the sectors identified by the county for targeted investment as drivers of the county’s economic growth

“Investment” means targeted investment projects as shall be defined under section 13

“Minister” means the County Executive Committee member, drawn from the participating counties, responsible for finance;

“Participating counties” means the counties, or their representatives, who are part of the regional economic bloc and who are the founding members of the regional bank

“Public Private Partnerships” means the pooling of resources from public and private sources for project support

“Regional Flagship Projects” means special projects set aside by the counties participating in the regional economic bloc with the aim of generating quick, broad based economic growth, with sustainable socio-economic returns

“Governor” means the Governor of Kisumu County

“Resource Mobilization Strategy” means the mechanisms that the county shall put in place to generate finances for capital as well as operational expenses of the bank

“Shareholder” means any person who holds a share in the bank.

Application

4. This Act will apply within Kisumu County.

PART II—BANKING

Establishment and General Powers of the Bank

5. (1) There shall be established a development bank to be known as the Regional Development Bank.

(2) The bank shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(3) The bank may, subject to any limitations contained in this Act relating to the business which may be carried on by the bank, purchase, hold, mortgage, manage or dispose of any real or personal property and may enter into such contracts as may be expedient.

Head Office branches and agents

6. The bank shall have its head office in Kisumu, or any other location as may be deemed suitable by the board, and may open such branches and appoint such agents in and outside Kisumu County, the participating counties and nationally as the board may consider necessary.

Objects of the Bank

7. The objects of the bank shall be—

- (a) to promote and finance development in the various sectors of the County, Regional and National economy—
 - (i) by assisting in the establishment, expansion and modernization of agriculture, infrastructure, tourism, financial services, information and communication technologies, mining, health and education, and

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- (ii) by furnishing or assisting in obtaining of financial, managerial, technical and administrative advice and services to these sectors;
- (b) to provide finance in the form of short, medium or long-term secured loans by purchasing or subscribing for shares or other securities or by acquiring any other interest;
- (c) to acquire shareholdings in any company and to establish subsidiary companies;
- (d) to make funds available for reinvestment by selling any investment of the bank when and as appropriate;
- (e) to draw, accept or endorse bills of exchange for the purposes of the business of the bank; and
- (f) to do any such other things as are incidental or conducive to the fulfillment of the objects of the bank.
- (g) to ensure equitable access to finance to marginalized groups as described in sections 35, 36 and 37.

Capital and Reserve

Authorised capital

8. (1) The authorised capital of the bank shall be one billion Kenyan shillings divided into one thousand shares of one million shillings each. The Minister shall invite participating counties to invest proportionate funds towards the authorized capital.

(2) The Minister may, on the advice of the board and with the approval of the shareholders, by statutory order, increase the authorized capital of the bank.

(3) The bank shall not transact any business until at least one thousand shares have been fully subscribed and paid.

Liability

9. The liability of any shareholder of the bank shall be limited to the amount of his or her share.

General Reserve Fund

10. (1) There shall be a General Reserve Fund of the bank.

(2) At the end of each financial year of the bank, after allowing for the expenses of operation, and after provision has been made for bad and doubtful debts, depreciation of assets, contributions to staff and superannuation funds and any other contingencies, there shall be transferred to the General Reserve Fund any profit earned by the bank

until the amount of money in the fund is as much as the amount of paid-up capital of the bank, in which case the bank shall, by resolution, decide what should be done with the profits.

Credit Guarantee Fund

11. (1) there shall be a Credit Guarantee Fund which shall be administered by the bank.

(2) The funds of the fund shall consist of contributions from the County Government, the banks and any other body or source.

(3) The fund shall be applied towards assisting a marginal borrower to secure a loan from a bank or other credit institution.

(4) For the purposes of this section, "marginal borrower" means a businessperson with neither sufficient security nor previous ascertainable business experience, and includes a businessperson who, having been successful in a business at a certain level, wishes to make some rapid expansion of that business.

Borrowing

12. (1) Subject to this section, the bank may borrow, raise or guarantee any sums of money from any source in or outside the county, and the region upon such terms and conditions as may be determined by the board.

(2) The total amount of monies borrowed, raised or guaranteed and owing or outstanding under this section shall not at any time exceed such sum as the Minister may determine having regard to the total amount of the paid-up capital and reserve of the bank.

(3) Any loan obtained by the bank from foreign institutions shall be dealt with in accordance with the relevant Kenyan Act.

Investing

13. (1) The board may invest idle funds and reserves of the bank in appropriate securities, and investment projects as described in Sections 32, 33, 34 and 35.

(2) The Minister will from time to time vary the bank loan portfolio to expand investment in flagship projects as described in sections 32, 33, 34 and 35.

Board of Directors

14. (1) The bank shall have a board of directors comprising —

(a) a chairperson, and 1 representative from each of the participating Counties;

(b) the managing director appointed under section 18;

(c) the Governor and;

(d) the County Executive Committee Member for Finance and Planning.

(2) The directors to be appointed under sub-section (1)(a) shall be persons who have qualifications or experience in banking or financial matters.

(3) A person shall not be appointed under sub-section (1) (a) or continue to hold that office if he or she is or becomes —

(a) an employee of the bank;

(b) an undischarged insolvent or bankrupt;

(c) of unsound mind; or

(d) convicted of an offence involving fraud or dishonesty.

Function of the Board

15. (1) Subject to this Act, the board shall be responsible for the general supervision, control, administration and business of the bank and may exercise any function and do any act that may be exercised or done by the bank.

(2) The board may utilise the funds of the bank for the purpose of defraying expenditure incurred in the management or transaction of the business or affairs of the bank and the remuneration of the directors and employees of the bank.

(3) The board shall ensure that every application dealt with on behalf of the bank is considered strictly on its financial and economic merits.

(4) The board shall take measures to ensure that financial assistance given by the bank to any particular project or programme is utilized for the purpose for which it was given.

Term of office

16. (1) A director, other than an ex officio director, shall hold office for such term which shall not be less than two years nor more than four

years as the Minister may determine at the time of the director's appointment.

(2) Where the office of a director falls vacant otherwise than by the expiry of his or her term of office or where, in the opinion of the Minister, a director is incapable of performing his or her duties due to illness, absence from Kenya or any other sufficient cause, the Minister may appoint another person to hold the office for the remainder of the term of office of the person causing the vacancy.

(3) A director may, by writing under his or her hand addressed to the Minister, resign his or her office.

Board Meetings

17. (1) The chairperson shall preside at all meetings of the board, but in his or her absence any director appointed for that purpose by the chairperson shall preside.

(2) The chairperson shall summon meetings as often as he or she may consider necessary, but there shall be at least one meeting in every two months.

(3) The quorum at any meeting of the board shall be seven.

(4) Decisions of the board shall be taken by a simple majority of the directors present and voting, with the person presiding having a casting vote.

Managing Director

18. (1) The bank shall have a managing director.

(2) The managing director shall be appointed by the Minister and shall hold office on such terms and conditions as shall be specified in the instrument of appointment.

(3) The managing director shall be a person who has qualifications and substantial experience in banking or financial matters.

(4) A person shall not be appointed or continue to hold office as managing director if he or she is or becomes—

(a) an undischarged insolvent or bankrupt;

(b) of unsound mind; or

(c) convicted of an offence involving fraud or dishonesty.

(5) Without prejudice to subsection (4), the Minister may remove the managing director from office for inability to perform the functions of his or her office on the ground of infirmity of body or mind.

(6) Where the managing director is temporarily incapacitated by illness or other cause from the performance of his or her functions or where the office of managing director is vacant, the Minister may, on the recommendation of the board, appoint an officer of the bank qualified in terms of this section to perform the functions of the managing director for the duration of the incapacity or until the vacancy in the office of managing director is filled.

Functions of Managing Director

19. The managing director shall be the chief executive officer of the bank and shall, subject to the general control of the board on matters of policy, and subject, in particular, to any bylaws and regulations made under sections 30 and 31, be responsible for the direction of the day-to-day business of the bank and its administration and the organization and control of the employees of the bank.

Declaration of interest

20. (1) A director or employee of the bank shall declare his or her other directorships or any interest he or she may hold directly or indirectly in any company.

(2) The bank shall not make any investment in or otherwise transact any business with an enterprise in which a director or an employee is a partner, director or shareholder, or is in any other way directly or indirectly interested, unless the transaction is unanimously approved by the directors.

Employees

21. (1) The board may, from time to time, and upon such terms and conditions as it may think fit, appoint officers and other employees as may be expedient for the proper and efficient conduct of the functions and business of the bank.

(2) The board may delegate any of its powers of appointment under this section to the managing director subject to such restrictions as the board may prescribe.

(3) The board may, with the prior approval of the Minister, grant pensions, gratuities or retiring allowances to officers and other employees of the bank.

Declaration of Secrecy

22. (1) Any person of whatever designation participating in the direction, administration, control or running of the bank shall be bound by a declaration of secrecy unless he or she is otherwise called upon to give evidence in a court of competent jurisdiction or to fulfill other obligations

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imposed by law, or required to do so by the board in the performance of his or her duties.

(2) Sub-section (1) shall, so far as applicable, apply to former employees of the bank.

Audit and Accounts

23. (1) The board shall cause the books of account and proper records relating to them to be kept in such form and manner as the board may determine.

(2) The accounts of the bank shall be audited by an accountant appointed by the board with the prior approval of the Minister.

(3) The auditor may, if he or she wishes, make a continuous audit of the accounts of the bank.

(4) The auditor shall, not later than three months after the end of the financial year, report annually to the board the results of his or her examination of the accounts and the financial statement of the bank, and the report shall state whether in his or her opinion—

- (a) proper books of account have been kept by the bank; and
- (b) the financial statement of the bank—

- (i) was prepared on a basis consistent with that of the preceding year and is in agreement with the books of account;
- (ii) in the case of the balance sheet, gives a true and fair view of the state of the bank's affairs as at the end of the financial year; and
- (iii) in the case of the revenue or income and expenditure, gives a true and fair view of the income and expenditure of the bank for the financial year.

Financial Year

24. The financial year of the bank shall be a period of twelve months ending on the 31st day of June of each year.

Annual report

25. (1) The board shall, not later than four months after the end of each financial year, submit to the Minister a report dealing generally with the activities and operations of the bank during the preceding financial year and in particular—

- (a) such information with regard to the procedures and policy of the bank as the bank considers may properly be given without detriment to the interests of any activities of the bank; and
- (b) a copy of the statement of account prepared for the purposes of an audit under section 23.

(2) The Minister shall, not later than six months after the end of the financial year, lay before the County Assemblies of the participating counties the report submitted to him or her under sub-section (1) and shall cause a statement of account referred to in sub-section (1) to be published in the Gazette.

Contracts

26. (1) Contracts on behalf of the bank may be made in the following manner—

- (a) a contract which, if made between private persons, would be by law required to be in writing, and if made according to any law for the time being in force in Kenya is required to be under seal, may be made on behalf of the bank under the common seal of the bank;
- (b) a contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the bank in writing and signed by any person acting under authority, express or implied; and
- (c) a contract which, if made between private persons, would be by law valid although made orally only and not reduced to writing, may be made orally on behalf of the bank by any person acting on its authority, express or implied.

(2) A contract made according to and under sub-section (1) may be varied in the same manner, and shall be effective in law and shall bind the bank and its successors and all other parties to it.

Securities

27. (1) Any lending by the bank shall be adequately secured by land title or other immovable or movable property.

(2) Where the County Government, or the participating counties at their initiative, instructs the bank to provide funds for a certain project or programme, the financing shall be secured by a county government guarantee.

Exemption from tax

28. The board shall initiate discussions with the Kenya Revenue Authority, and the National Government; discussions to exempt the bank from the payment of all taxes or duties payable to the National Government.

Liquidation

29. The bank shall not be placed in liquidation other than in pursuance of an Act of the County Assembly passed for that purpose and then only in such manner as that Act may specify.

Bank Bylaws

30. (1) The board may, with the prior approval of the Minister, make bylaws consistent with this Act regulating the following matters —

- (a) operation and management of the Credit Guarantee Fund;
- (b) meetings of the board;
- (c) provisions for the welfare of the employees of the bank;
- (d) the maximum amounts which may be advanced or lent to any person;
- (e) the remuneration of directors and the auditor;
- (f) the custody and mode of affixing the seal;
- (g) legal proceedings;
- (h) the terms and conditions of service of the employees of the bank;
- (i) the nature or form of declaration of secrecy;
- (j) conditions on which loans are to be granted; and
- (k) the conduct of the business of the bank generally.

(2) Notwithstanding the Interpretation of the Act, it shall not be necessary to publish in the Gazette the bylaws made by the board under this section, but the bylaws may be published in such manner as the board, with the approval of the Minister.

Regulation

31. The Minister may, after consultation with the board, make regulations for better carrying into effect the provisions of this Act and, in particular, for such matters as were the bank a company registered under the Companies Act, would be dealt with in the articles of association

PART III—INVESTMENT

Regional Flagship Projects

32. The board of the bank will from time to time select special projects for funding within the participating counties. These projects will be drawn from the economic growth sectors as identified by the prevailing county development plans including the Counties Integrated Development Plans and the Lake Basin Regional Economic Blueprint.

County Flagship Projects

33. The board of the bank will from time to time select special projects for funding within Kisumu County. These projects will be drawn from the economic growth sectors as identified by the prevailing county development plans including the Kisumu County Integrated Development Plan and the Lake Basin Regional Economic Blueprint.

Such projects will specifically target the following economic growth sectors—

- (a) Agriculture
- (b) Infrastructure
- (c) Financial Services
- (d) Tourism
- (e) Information and Communication Technologies (ICTs)
- (f) Trade
- (g) Education
- (h) Health

Smallholder and Community Access

34. Smallholders and Community Access to Banking, Project and Business Financing and Advisory Services. The Minister, in consultation and with approval of the board will—

(1) Initiate mechanisms to ensure that the smallholder farmers and business persons in Kisumu county, and the participating counties, have access to adequate finance for their business projects;

(2) In consultation with the board, allocate a percentage of the loan portfolio, not less than 15%, that will fund projects specifically targeting smallholder and community business units.

Youth, Women and Persons with Disabilities Access

35. Youth, Women and Persons with Disabilities Access to Project and Business Financing and Advisory Services The Minister, in consultation and with approval of the board will —

(1) Initiate mechanisms to ensure that youth, women and persons with disabilities in Kisumu County, and the participating counties, have access to adequate finance for their business projects;

(2) In consultation with the board, allocate a percentage of the loan portfolio, not less than 15%, that will fund projects specifically targeting youth, women and persons with disabilities.