

SPECIAL ISSUE

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REPUBLIC OF KENYA

***KISUMU COUNTY GAZETTE
SUPPLEMENT***

ACTS, 2015

NAIROBI, 29th June, 2015

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

THE KISUMU COUNTY TRADE FUND ACT, 2015

No. 8 of 2015

Date of Assent: 25th June, 2015

Date of Commencement: 29th June, 2015

AN ACT of the County Assembly of Kisumu to establish a revolving fund for the purposes of Trade and to establish a Board for efficient management of such Fund in a sustainable manner and for connected purposes

ENACTED by the County Assembly of Kisumu as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kisumu County Trade Fund Act, 2015. Short title

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

“Board” means the Kisumu County Trade Fund Management Board established by 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;

“Fund” means the Kisumu County Trade Loans Fund established by this Act;

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

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

“Chairperson” means any Kenyan citizen who is appointed chairperson under this Act;

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

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

PART II—ESTABLISHMENT AND FUNCTIONS OF THE FUNDS BOARD

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

(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 bill, and which may lawfully be done or performed by a body corporate.

4. (1) The Board shall consist of—

Constitution of the Board.

- (a) a Chairperson appointed by the Governor of Kisumu County from a list of three persons who meet the relevant appointment criterion nominated by the Executive Committee Member in charge of trade
- (b) Executive Committee Member in charge of matters relating to trade or his/her nominee;
- (c) The Chairperson of the Kenya National Chamber of Commerce & Industry, Kisumu County;
- (d) Seven representatives, one from each Sub-County of the Business Community and three of whom shall be of either gender;
- (e) One representative from the Business Community.

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

(3) The members of the Board other than the Director shall hold office for a period of three consecutive years and are eligible for re-appointment only once. They should not

be holding any other position in the County Government

(4) The office of a member of the Board shall fall vacant—

- (a) if not being an ex officio member, he submits his resignation in writing under his hand to the appointing authority through the Secretary;
- (b) if the Board is satisfied that such a member is by reason of his physical or mental infirmity unable to execute the functions of his office;
- (c) if s/he has been adjudged bankrupt by a competent court of law or has committed a criminal offence which directly or otherwise reflects adversely on his status as a member of the Board;
- (d) for non-attendance of three consecutive meetings without cause or upon his/her death.

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

5. (1) There shall be a Director of the Board who shall be responsible for the management of the day-to-day activities of the Board and shall be answerable to the board on all matters concerning the management of the fund.

Director of the Board.

(2) Subject to this Act, the Board in consultation with the Members of the Executive Committee Members in charge of Trade and Finance matters shall appoint the Board's Director through a competitive recruitment process on such terms and conditions as the Board may determine in the appointment instruments.

(3) The Director of the Board shall be the Secretary of The board and an ex-officio member of the Board without the right to vote in any matter before the Board

(4) The Director/ 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 their duties and perform functions assigned to them by the Board.

6. The functions of the Board shall be—

Functions of the Board.

- (a) to formulate sound policies for regulating the management of the Fund;



- (b) to solicit for funds and other assistance to promote the functions of the Board;
- (c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans;
- (d) to receive any gifts, donations, grants or endowments made to the Board, and to make legitimate disbursements therefrom;
- (e) to 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) to enter into contracts with financial institutions for the purpose of loans disbursement and recovery;
- (g) to grant loans out of the Fund either with or without security, as the Board may deem fit, to any eligible person to enable him/her, or assist any trader, to meet the cost of doing business;
- (h) to determine the maximum number of eligible businesses to be granted loans in any one particular year;
- (i) to 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 in charge of trade, to set up and expend such other funds as may from time to time be required;
- (k) to 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) to borrow such monies from such sources and in such amounts as may be approved by the

Executive Committee Member in charge of trade with the concurrence of the Board and to secure such loans in such manner as they deem fit;

- (m) to take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;
- (n) to perform any other functions relating to the granting of Traders' loans in accordance with the provisions of this Act; and
- (o) to perform and exercise all other functions and powers conferred on the Board by this Bill".

7. (1) The Chairperson shall call for and preside at all the meetings of Board unless he 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 Chairman 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 Chairman 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 Kisumu County Trader's Fund which shall be managed and administered by the Board.

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 Kisumu 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 includes 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 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 under subsection (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 criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

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

Obligations of the Loanees.

- (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

For purposes of 1(c) security here will include—

- (a) Land Title Deed
- (b) Plots recognized by the County Government
- (c) Guarantee by salaried persons of recognized reputable institutions
- (d) Group co-guarantee mechanism
- (e) Car log book
- (f) Any other security determined by the Board from time to time.

13. Thirty days after the end of each calendar year the Board shall send to Executive Committee Member in Charge of trade an annual return. Annual Returns.

14. (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— General Provisions.

- (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

15. The financial year of the Board shall be the period of twelve months commencing on the 1st of July and ending on the 30th day of June of the following year. Financial Year of the Board.

16. (1) The Board shall submit to the Executive Committee Member an estimate of its income and Annual Estimates.

expenditure during the succeeding financial year one month before the commencement of the financial year.

(2) The Executive Committee Member in charge of trade shall communicate to the Board her 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).

17. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund. Books of Accounts and Audits.

(2) a balance sheet showing in detail the assets and liabilities of the—

- (a) Board at the end of the financial year;
- (b) a statement of financial activities, income and expenditure during the financial year; and
- (c) Other statements of accounts as may be necessary to fully disclose the undertaking, assets, liabilities and discharge of the functions of the Board.

(3) The accounts of the Board shall be audited by the Auditor-General or an auditor appointed by the Board with the approval of the Auditor-General

(4) The Auditor-General may give any general or special directions to the board and the board shall comply with those directions.

18. 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 Report of
the Board.

PART V—MISCELLANEOUS PROVISIONS

19. (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, Offences
and Penalties.

(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.

20. 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 chairperson, 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.

21. 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, his property or any of his 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.

22. The Executive Committee Member may make regulations generally for the better carrying out the

Regulations

provisions of this Act, and without prejudice to the foregoing, the Executive Committee Member may make regulations in respect of the following—

- (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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