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No. 4 of 2019

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THE KITUI COUNTY CORPORATIONS ACT, 2019

AN ACT of the County Assembly of Kitui to make provision for the establishment of county corporations, for control and regulation of county corporations and for connected purposes.

ENACTED by the County Assembly of Kitui, as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as Kitui County Corporations Act, 2019 and shall come into operation upon its publication in the *Kenya Gazette*.

Interpretation

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

“Accounting Officer” has the same meaning given under Section 2 of the Public Finance Management Act, 2012;

“Advisory Committee” means the Kitui county corporations Advisory Committee established under Section 33;

“Auditor-General” means the Auditor-General appointed as such under Section 4 of the Public Audit Act, 2015;

“Board” means the Board constituted in accordance with Section 8 or the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of a county corporation;

“Chief Executive Officer” means the person appointed and employed as such under Section 18 or the person for the time being exercising the executive powers of a county corporation;

“County Assembly” means County Assembly of Kitui as established under Article 176 of the Constitution;

“County Executive Committee” means the county executive committee of Kitui as established in accordance with Article 176 of the Constitution;

“County Government-Linked Corporation” means a county corporation in which the county government is a shareholder with less than fifty percent of the share capital of the corporation;

“County Revenue Fund” means the revenue fund established under Article 207 (1) of the Constitution of Kenya 2010.

“County Treasury” means the County Treasury of Kitui as established under Section 103 of the Public Finance Management Act, 2012;

“Corporations” means the Kitui County Corporations established under this Act;

“financial year” has the meaning assigned to it under Article 260 of the Constitution;

“invest” means any form of funding, or potential funding, provided to a County corporation, including providing share capital, loans, grants or subsidies;

“Kitui County Corporation” means a public corporation within the county established by an Act of Parliament or county legislation;

“parent ministry” means the county ministry that intends to establish and manage a county corporation in line with this Act;

“public officer” has the meaning assigned to it in Article 260 of the Constitution of Kenya, 2010.

Objects and purpose of the Act

3. The objects and purpose of this Act is to—
 - (b) provide a legal framework for the establishment, management, operation and regulation of county corporations
 - (c) to provide a uniform code of governance for county corporations

PART II—ESTABLISHMENT, ATTRIBUTES, SOURCES OF FUNDS AND POWERS OF KITUI COUNTY CORPORATIONS

Establishment of county corporations

4. (1) The County Executive Committee may, upon taking into account any recommendations of the County Treasury, establish or dissolve a county corporation with the approval of the County Assembly

(2) In order to establish a county corporation or a subsidiary of a county corporation—

- (a) the responsible County Executive Committee Member shall submit a written business case to the County Executive Committee Member for finance, with detailed justification for establishing the county corporation or the subsidiary who shall consider the same in consultation with the advisory committee established under section 31 for final input;

(b) the business case in Sub-Section 2(a) shall be informed by a feasibility assessment of the proposed county corporation or the subsidiary for the purpose of ascertaining —

- (i) the economic and financial viability of establishing a county corporation;
- (ii) whether the proposed activity cannot be conducted through an existing corporation or the parent Ministry;
- (iii) whether or not there is need to establish a new corporation;
- (iv) the functions and objective that its establishment is supposed to attain;
- (v) how the activities of the proposed corporation will fit in the county Ministry's legislative mandate and medium term strategy, and aid the realization of the objectives of the programmes associated with that Ministry;
- (vi) how the activities of the proposed county corporation will fit in the overall medium term plan of county government;
- (vii) how they impact the fiscal position of the county government; and
- (viii) the amount of county government share.

(3) The feasibility and viability assessment conducted under paragraph 2(b) of this legislation shall be submitted to the County Executive Committee for approval.

(4) Upon approval of the business case by the County Executive Committee, the necessary establishment processes shall be undertaken by the relevant Ministry as required by a legislation on formation, management and dissolution of County corporations to allow it perform the functions stipulated in the instruments for incorporation.

(5) The county government entity responsible for investment portfolio management in the County Treasury shall be constantly updated on the progress of a county corporation.

(6) The County Executive Committee Member responsible for investment portfolio management in the County Treasury shall conduct regular review of county corporation to assess the relevance of the mandate and the justification for their continued existence and where necessary make recommendations to the County Executive Committee for the dissolution or merger of corporations.

(7) A county corporation established under this Section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (i) suing and being sued;
- (ii) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (iii) borrowing money or making investments; and
- (iv) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(8) Where the County Treasury recommends and the County Executive Committee approves the dissolution of a county corporation, nothing in this Act shall be construed as derogating from the procedure by which the county corporation would be dissolved under the law by or under which it was established.

Attributes of county corporations

5. (1) A county corporation shall operate as a commercial entity and shall—

- (a) operate for profit;
- (b) be self-financing;
- (c) be self-sustaining;
- (d) be accountable to all stakeholders and the public through the county assembly.

(2) Notwithstanding subsection (1), a county corporation may, in addition to its commercial functions, perform a strategic function with the approval of the County Executive Committee.

(3) A county corporation which also performs a strategic function shall operate on a commercial basis and may be publicly funded for the purpose of financing investments for the achievement of public policy objectives

(4) The operations of county corporations which operate on a commercial basis shall be undertaken in accordance with this Act, any other relevant written law and in the instrument of incorporation.

(5) The County Executive Committee Member responsible for finance shall, from time to time, publish an inventory of county corporations that are purely commercial and those undertaking strategic functions.

(6) (a) The corporation shall institute measures to ensure that—

- (i) its operations and investments are sustainable and profitable;
- (ii) it is competitive in all its investment ventures;

- (b) The corporation shall undertake an assessment after every two years to measure the sustainability and competitiveness of the investment venture.
- (c) Notwithstanding sub section 5 (b) the line County Executive Committee Member may at any time require the corporation to undertake the assessment under sub section 5(b) in relation to any investment where the County Executive Committee member is of the opinion that the venture does not meet the required threshold in sub section (5) (a).
- (d) The County Executive Committee member may in consultation with the county corporation board require the assessment under sub section (5)(b) to be undertaken by an independent person or the corporation.
- (e) Where the investment venture ceases to be sustainable, profitable or competitive the corporation shall—
 - (i) restructure the investment;
 - (ii) merge the investment with other investment;
 - (iii) terminate the investment by way of sale, disposal, transfer or liquidation.
- (f) The County Executive Committee member in charge of Treasury shall appoint a receiver manager.

Powers of the Kitui county corporations

6. (1) Subject to this Act and the relevant establishing legislation, every county corporation shall have all the powers necessary or expedient for the performance of its functions.

(2) After the commencement of this Act and notwithstanding subsection (1), the power of a county corporation to borrow money shall be exercised only with the approval of the County Executive Committee on recommendation by the County Executive Committee Member for the time being responsible for finance and with approval of the county assembly, subject to such limitations and conditions as may be imposed by the Public Finance Management Act, 2012.

(3) Notwithstanding the provisions of Section 6(2), Corporations shall not borrow money by way of loans or float any bond or shares unless such loan is related to capital investments.

Sources of Funds of county corporations

- 7. (1) The funds of a county corporation shall include—

(a) such monies as may be appropriated to the corporation by the county assembly as may be appropriate;

(b) such fees, monies or assets as may accrue to or vest in the corporation in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and

(c) monies from any other source provided for or donated or lent to the corporation.

(2) Revenues generated by county corporations shall be appropriations-in-aid unless directed otherwise by the County Executive Committee Member responsible for finance

(3) Notwithstanding the provisions of Section 7(1)(a), the County Assembly shall not appropriate funds to a County corporation for more than three financial years after its establishment.

PART III—BOARDS AND MANAGEMENT OF KITUI COUNTY CORPORATIONS

Establishment of Boards

8. There shall be a Board for every Kitui county corporation, which shall supervise and control the business, property, and affairs of the corporation except as otherwise expressly provided for in any written law or the law under which a county corporation is established.

Composition of Boards

9. (1) Unless the written law by or under which a county corporation is established requires, a Board shall consist of—

- (a) a non-executive chairperson appointed by the County Executive Committee Member under which the corporation falls;
- (b) the Chief Officer of the parent ministry;
- (c) the Chief Officer in the Ministry for the time being responsible for matters relating to finance or his or her representative;
- (d) four persons of opposite gender not being employees of the corporation with necessary expertise in areas of business or related field appointed by the County Executive Committee Member under which the corporation falls;
- (e) the Chief executive officer who shall be an ex- officio member and the secretary to the Board;

(2) The persons appointed under sub-section (1) shall be by name and by notice in the *Gazette*.

(3) The persons appointed under sub section (1) (a) and (d) shall hold office for a term of three years, but shall on the basis of satisfactory performance, be eligible for re-appointment for one further term of three years.

Qualifications of the chairperson and members of the Board

10. A person shall be qualified for appointment as a chairperson under Section 9 if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has served in a senior management position in the private or public sector;
- (c) has at least four years post-qualification professional experience;
- (d) is a member of a professional body; and
- (e) satisfies the requirements of Chapter six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Board under Section 9(1)(d) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has a distinguished career in their respective field;
- (c) has at least three years' post-qualification professional experience in matters relating to finance or in a related field;
- (d) has served in a senior management position for a period of at least three years;
- (e) is a members of a professional body; and
- (f) satisfies the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Board if the person—

- (a) is a member of the County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been convicted of a felony;
- (e) has been removed from office for contravening the Constitution or any other law; or
- (f) has, in the conduct of his affairs, not met any statutory obligations.

Vacation of Office by Members of the Board

11. (1) The office of a member of the Board appointed under Section 9 shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) resigns in writing to the County Executive Committee Member under which the corporation falls;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is convicted of an offence involving fraud or dishonesty;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board;
- (g) failing to declare his or her interest in any matter being considered or to be considered by the board;
- (h) dies;
- (i) becomes an employee of the corporation; or
- (j) is removed from office by the County Executive Committee Member in line with Section 12(3).

Power to issue directions and to remove Board

12. (1) The County Executive Committee Member under which the corporation falls may give directions, in writing, of a general or specific nature to a Board with regard to the better exercise and performance of the functions of the county corporation and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this Section may require that the memorandum and articles or any other documents establishing a county corporation, be amended to conform with any requirement of this Act, where the same is inconsistent therewith.

(3) Notwithstanding the provisions of any other written law or the articles of association establishing and governing a Board, if it appears, at any time, to the County Executive Committee Member under which the corporation falls, that a Board has failed to carry out its functions in the best interest of the county, he or she shall, in consultation with the Governor, revoke the appointment of any member of the Board and nominate a new member for the remainder of the period of office of that member or constitute a new Board for such period as he shall, in consultation with the Advisory Committee determine.

Meetings and procedure of Boards**13. (1) After the commencement of this Act—**

- (a) the Board of every County corporation shall meet not less 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;
- (b) a meeting of a Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision, the chairperson in consultation with the chief executive officer shall decide that a meeting is necessary, on a date and at a time determined by the chairperson;
- (c) no meeting of a Board shall be held at any place other than the registered or principal office of the county corporation except with the prior written approval of the Advisory Committee;
- (d) unless three-quarters of the total membership of a Board otherwise agree, at least fourteen days' written notice of every meeting of a Board shall be given to every member of the Board;
- (e) the quorum for the conduct of business at a meeting of a Board shall be two-thirds of the total number of members of a Board
- (f) the chairperson of a Board shall preside at all meetings of the Board but in the absence of the chairperson the members present shall appoint one of their members to preside at the meeting;
- (g) A decision on any matter before a Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote;
- (h) every member of a Board who is likely to be interested, otherwise than as a member of that Board or who participates or is or may become entitled to participate directly or indirectly, in the profits from any contract or proposed contract or work done or proposed to be done for the county corporation, shall, on the matter coming before a meeting of the Board for consideration, immediately declare his interest therein and shall, unless the meeting otherwise agrees, retire from the meeting and shall in any case not be entitled to vote on the matter.

(2) The chief executive officer of a county corporation or an officer instructed by the chief executive officer in that behalf, present at a meeting of a Board or a committee thereof, shall have the right to require his

opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the chief executive officer's opinion, is contrary to his advice or contrary to law.

Committees

14. (1) The Board of a county corporation may establish committees to deal with such matters as shall be mandated under the establishing legislation

(2) The establishment of any committee in accordance with this Section shall be served on the County Corporations Advisory Committee.

Duty of care

15. (1) A member of the Board of a county corporation shall at all times exercise a reasonable degree of care and diligence in the performance of the functions of that office and, without limiting the effect of the foregoing, shall for that purpose—

(a) take reasonable steps to inform himself or herself about the corporation, its activities and the circumstances under which it operates;

(b) take reasonable steps to obtain sufficient information and advice about all matters to be decided by the Board or pursuant to a delegation in order to enable him or her to make conscientious and informed decisions; and

(c) exercise an active discretion with respect to all matters to be decided by the Board or pursuant to a delegation.

(2) A member of Board is bound to give continuous attention to the affairs of the entity and is in addition required to exercise reasonable diligence in the preparation for and attendance of Board meetings

(3) In determining the degree of care and diligence required to be exercised by a member of the Board, regard shall be given to the skills, knowledge or acumen possessed by the member and the degree of risk involved in any particular circumstances

(4) A member of Board who is culpably negligent in the performance of his or her functions commits an offence

(5) A member of the Board is not culpably negligent for the purposes of sub-section (4) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act to warrant the imposition of a criminal sanction.

Disclosure

16. (1) A member of the Board of a county corporation who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board shall—

- (a) as soon as reasonably practicable, disclose, in writing, to the Board the full and accurate details of the interest;
- (b) not participate in any discussion by the Board relating to that matter;
- (c) not vote in relation to that matter; and
- (d) be absent from the meeting room when any such discussion or voting is taking place.

(2) If a member of the Board makes a disclosure of interest and complies with requirements of subsection (1) in respect of a proposed contract—

- (a) the contract shall not be avoided by the corporation; and
- (b) the member is not liable to account to the corporation for any losses that may be incurred upon entering into the contract.

(3) If a member of the Board fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the corporation may void the contract.

(4) The corporation shall not void a contract under subsection (3) if the member of the Board has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

(5) Where a member of the Board of a county corporation has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that makes it reasonably foreseeable that a conflict might arise with his or her duties as member of the Board of the corporation, the member of the Board shall as soon as is reasonably practicable, disclose to the Board, in writing, of the entity the full and accurate details of the interest or office.

(6) A disclosure under this Section must be recorded in the minutes of the Board and reported to the County Executive Committee Member under which the corporation falls.

(7) Without limiting the effect of this Section, a member of the Board shall not be perceived to have an interest in a matter for the purposes of this Section if an associate of the member of the Board has an interest in the matter.

(8) This Section shall not apply in relation to a matter in which a member of the Board has an interest while the member is not unaware of the interest in the matter.

(9) In any proceedings against a Board member, the burden will lie on the member to prove that he or she was not, at the material time, aware of the interest.

Remuneration and expenses of chairperson and members of the Board

17. The remuneration of the Chairperson and members of the Board shall be paid out of the funds of the county corporation and shall be paid such allowances or expenses as are provided for by the Salaries and Remuneration Commission.

Chief Executive Officer

18. (1) There shall be a chief executive officer for every county corporation.

(2) The Boards shall, through open, transparent and competitive recruitment processes appoint suitably qualified persons to be the chief executive officers of county corporations.

Functions of the Chief Executive Officer

19. (1) The chief executive officer shall—

- (a) in consultation with the Board, be responsible for the day to day management and direction of the affairs and transactions of county corporation, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the corporation;
- (b) carry out any other function as may from time to time be assigned under the establishing legislation or by the Board.

Qualifications of the Chief Executive Officer

20. To qualify for appointment as a chief executive officer of a county corporation, a person must—

- (a) possess a degree in business, accounting, finance or any other related field from a recognized university;
- (b) have had experience in management for a period of not less than five years; and
- (c) possess any other qualifications as may be prescribed in the legislation establishing the particular county corporation.

Term of office of the Chief Executive Officer

21. (1) The chief executive officer shall hold office for a period of three years, on such terms and conditions as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

(2) The chief executive officer shall be an ex-officio member of the Board but shall have no right to vote at any meeting of the Board.

Vacation of Office of the Chief Executive Officer

22. (1) The chief executive officer may—

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) be removed from office by the County Executive Committee Member on recommendation of the Board, on any of the following grounds—
 - (i) incompetence;
 - (ii) abuse of office;
 - (iii) gross misconduct;
 - (iv) failure, without reasonable cause, or written authority of the County Executive Committee Member for the entity to attend three consecutive meetings of the Board;
 - (v) gross violation of the Constitution or any other written law;
 - (vi) physical or mental incapacity rendering him or her incapable of performing the duties of that office;
 - (vii) bankruptcy;
 - (viii) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
 - (ix) is convicted of an offence involving fraud or dishonesty.

Responsibility for monitoring financial performance of county corporations

23. The County Executive Committee Member for that entity shall be responsible for monitoring—

- (a) the financial performance of the county corporations and county government-linked corporations falling under him/her; and
- (b) the performance of any functions or activities that affect the financial performance of the county corporations under him/her.

(2) The responsibilities of the County Executive Committee Member for that entity under sub-section 1 shall include in particular—

- (a) analyzing financial and other reports that are required to be prepared by a county corporation under any Act or county legislation;
- (b) reporting to the County Executive Committee on the performance of those county corporations; and
- (c) making recommendations to the County Executive Committee as to how a particular county corporation or county government-linked corporation could improve its performance.

The common seal of county corporations

24. (1) The common seal of County Corporation shall be kept in the custody of the respective chief executive officer or by such other person as the Board may direct, and shall not be used except upon the written order of the Board.

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

(4) The common seal of a county corporation shall be authenticated by the signature of the chief executive officer.

PART IV—CONTROL OF THE FINANCES OF KITUI COUNTY CORPORATIONS

Annual Estimates

25. (1) At least three months before the commencement of each financial year, the corporation shall cause to be prepared annual estimates of the corporations for that year.

(2) The annual budget shall make provisions for all estimated expenditure of the corporation for the financial year and in particular shall provide for the—

- (a) allocations for investments related to business venture;
- (b) debt repayment schedule;
- (c) payment of salaries, allowances and other charges in respect of the staff of the corporations; and
- (d) payment of allowances, pensions, gratuities and other charges in respect of members of the board and members of the corporation.

(3) The annual estimates shall be approved by the board before the commencement of the financial year to which they relate and once approved the sum provided in the estimates shall be submitted to the County Executive Committee for final approval.

Expenditure not included in annual estimates

26. No County corporation shall, without the prior approval in writing of the County Executive Committee Member for the corporation and the County Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with Section 25.

Dealing with assets

27. (1) The assets of a county corporation may be disposed off—

- (a) if they are current assets in the normal course of business carried on by that county corporation;
- (b) where the disposal and the utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with Section 25; and
- (c) by way of sale or otherwise with the approval of the County Executive Committee Member for the corporation and the County Treasury where such disposal has not been taken into account in the estimates.

(2) Subject to subsection (1), the County Executive Committee Member for the time being responsible for finance may, in consultation with the Advisory Committee, make rules for the acquisition and disposal of assets by county corporations and different rules may be made with respect to different county corporations; and such rules shall be brought to the notice of the county corporations and other persons affected thereby

(3) This Section does not apply with respect to procurements or disposals to which the Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015) applies.

Books of accounts, records and audits

28. (1) Every county corporation shall keep or cause to be kept proper books recording all the property, undertakings, funds, activities, contracts, transactions and other business of the county corporation.

(2) The County Executive Committee Member for the time being responsible for finance may prescribe the form of any book required to be kept under subsection (1) and unless a form has been prescribed, a form suitable for the purpose shall be used.

(3) The accounts of every county corporation shall be audited and reported on annually in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015 or any other relevant law.

(4) The financial year of the corporation shall be the period of twelve months ending on thirtieth June in each year.

Accountability

29. (1) A Board shall be responsible for the proper management of the affairs of a county corporation and shall be accountable for the moneys, the financial business and the management of a county corporation.

(2) The chief executive of a county corporation may be summoned by the county assembly committee for public investments to answer on behalf of the Board any question arising from a report, including a special report of the Auditor-General concerning the county corporation.

Annual reporting by the County Treasury on county corporations

30. (1) Not later than four months after the end of each financial year, the County Treasury shall prepare and submit to the county assembly a consolidated report summarizing the extent of county government involvement or investment in, or funding of, all county corporations and county government-linked corporations for the financial year.

(2) The report in subsection (1) shall include information on—

- (a) the date of incorporation and objects of the county corporation;
- (b) the amount of county government shareholding, directly or indirectly, in the county corporation;
- (c) any changes in the shareholding of the county corporation during the financial year;
- (d) the amount of any funding in the form of grants or subsidies provided by the county government to the county corporation or public entity, excluding profit making entities, during the financial year;
- (e) the amount of any loans made by the government to the county corporation during the financial year;
- (f) the cumulative amount of undischarged loans in respect of the corporation;
- (g) the amount of profit or loss of the County corporation for the financial year;

- (h) the amount of any revenue received by the county government from the county corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the county corporation;
- (i) the payments made, or losses incurred, by the county government to meet contingent liabilities as a result of loans during the financial year, including payments made in respect of loan write-offs or waiver of interest on loans; and
- (j) an assessment of the financial and related non-financial performance of the county corporation for the financial year.

(3) Once every three years, the County Executive Committee member responsible for matters relating to public investments shall prepare a report on the need for the county government continued involvement in, or funding of, the County Corporation or county government-linked company.

(4) Copies of the reports prepared in subsections (1) and (3) shall be submitted to the Controller of Budget, the Commission on Revenue Allocation and the Auditor-General.

Renewal of depreciating assets and disposal of surplus funds

31. (1) Every County Corporation shall make provision for the renewal of depreciating assets by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(2) Where there are any surplus moneys after making the provision required by subsection (1) the surplus moneys shall be disposed of in such manner as the County Executive Committee Member for the corporation, in consultation with the Board, may, in writing, direct.

(3) Notwithstanding subsection (2), the County Executive Committee Member for the time being in charge of finance may require the whole or any part of the surplus moneys to be paid into the County Revenue Fund where the exigencies of the financial situation so require.

Restriction on loans to Board members and staff

32. Notwithstanding any other written law establishing a county corporation or its memorandum and articles of association, no county corporation shall grant to a member of the Board or staff any loan or advance or arrange any credit facility for him except in accordance with regulations made by the county corporation under this Section and approved by the County Treasury, but in the absence of those regulations

such loan, advance or credit facility may be granted in accordance with terms and conditions approved by the Advisory Committee established under Section 33 of this Act.

PART V—THE KITUI COUNTY CORPORATIONS ADVISORY COMMITTEE

Establishment of the Advisory Committee

33. (1) There shall be a Committee to be known as the Kitui County Corporations Advisory Committee which shall comprise of—

- (a) the Chief Officer for the time being responsible for matters relating to finance or his or her representative who shall be the chairperson
- (b) the Chief Officer in the Office of the Governor or his or her representative
- (c) the Chief Officer for the time being responsible for matters relating to Trade, Investments and Cooperatives or their representative;
- (d) four other members appointed by the Governor with the approval of the County Assembly.

(2) The Advisory Committee may invite a person in attendance for professional and special skills input for such purpose and for such period as it may determine.

(3) The Governor shall appoint a County public officer to be secretary to the Advisory Committee.

(4) Subject to directions by the Governor, the Advisory Committee shall determine its own procedure.

(5) The members and the secretary to the Advisory Committee shall be paid out of County public funds such allowances in such manner as the County Treasury may approve in line with the recommendations of the Salaries & Remuneration Commission

Functions of the Advisory Committee

34. (1) The Advisory Committee shall advise on matters relating to performance of county corporations and perform any other function as is required by this Act and in addition shall—

- (a) with the assistance of experts where necessary, review and investigate the affairs or performance of county corporations and make such recommendations to the County Executive Committee as it may deem appropriate;

- (b) in consultations with the County Executive Committee member for finance, advise the County Executive Committee on the establishment, reorganization or dissolution of county corporations;
- (c) examine any management or consultancy agreement made or proposed to be made by a county corporation with any other party or person and advise thereon;
- (d) examine proposals by county corporations to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities and advise thereon; and
- (e) consider business cases in consultation with the County Executive Committee Member in charge of Treasury.

Meetings and quorum of the Advisory Committee

35. (1) The Advisory Committee shall meet not less 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) A meeting of the Advisory Committee shall be held on such date and at such time as the Advisory Committee shall decide or, in the absence of such decision, the chairperson shall decide.

(3) A majority of the members of the Advisory Committee shall constitute a quorum for any meeting.

PART VI—MISCELLANEOUS PROVISIONS

Offences and penalty

36. A county corporation which, or an officer thereof who, fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the Auditor-General in the performance of his/her duties shall be guilty of an offence cognizable to the police and punishable by a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three years or both and Section 23 of the Penal Code (Cap. 63) shall, where the offence is committed by County corporation officer, apply *mutatis mutandis*.

Regulations

37. The County Executive Committee Member in charge of finance may make regulations generally for the better carrying into effect the provisions of this Act.