

SPECIAL ISSUE

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MACHAKOS COUNTY BILLS, 2019

NAIROBI, 27th September, 2019

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DEVELOPMENT FUND BILL, 2019**

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**MACHAKOS COUNTY CO-OPERATIVE ENTERPRISE
DEVELOPMENT FUND BILL, 2019**

A Bill for

**AN ACT of the County Assembly of Machakos to establish the
County Co-operative Enterprise Development Fund to
facilitate access to credit for cooperative societies, and for
connected purposes**

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Co-operative Enterprise Development Fund Act, 2019.

Interpretation

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

“applicant” means a co-operative society registered under Co-operative Societies' Act Cap 490 and includes an individual member of a cooperative society;

“annual general meeting” means the meeting of all members of a cooperative society convened every year;

“borrower” means a co-operative society or an individual member of co-operative society in receipt of a loan from the Fund;

“Board” means the Machakos County Co-operative Enterprise Development Fund Board established under section 6;

“Cooperative society” means a cooperative society registered under the Cooperatives Act Cap. 490 of the laws of Kenya;

“Co-operative union” means a co-operative society whose membership is restricted to primary societies;

“County Executive Committee Member” means the County Executive Committee Member responsible for Finance;

“Financial year” means the period of twelve months ending on the 30th June in each year; and

“Fund” means the Machakos County Co-operative Enterprise Development Fund established under Section 4.

Object and purpose of the Act

3. (1) The object of this Act is to provide for the legal framework for the establishment of the Fund to—

- (a) facilitate access to credit for cooperative societies within the county;
- (b) provide a conducive environment for business development;
- (c) enhance enterprise skills and promote local economic growth;
- (d) provide for the procedures for—
 - (i) the applying, processing of applications and approval of loans;
 - (ii) preparation and keeping of records of borrowers;
 - (iii) recovery, recalling and cancellation of loans.

(2) In the management of the Fund, the Board shall be guided by—

(a) the values and principles set out in Articles 10 and 232 of the Constitution; and

(b) the objects and principles of devolved government set out in Articles 174 and 175 of the Constitution.

**PART II—ESTABLISHMENT AND MANAGEMENT OF
THE FUND****Establishment of the Fund**

4. (1) There is established the Machakos County Cooperative Enterprise Development Fund which shall be a revolving fund.

(2) The Fund shall be managed by the Board in accordance with this Act.

Initial capital and other sources of the Fund

5. (1) The initial capital of the Fund shall consist of money appropriated by the County Assembly for the first five successive financial years after the commencement of this Act.

(2) Other sources of the Fund shall consist of—

- (a) money received by or falling due to the Fund in respect of repayments of the principal and interest on loans to borrowers;

- (b) money borrowed by the Board with the approval of the County Assembly subject to provisions of section 142 of Public Finance Management Act for the purpose of discharging any of its functions;
 - (c) money earned by or arising from investment made in respect of the Fund; and
 - (d) any other money lawfully accruing to or vested in the Fund including gifts, grants and donations.
- (3) There shall be paid out of the Fund loans approved by the Board in accordance with this Act.
- (4) Not more than three per cent of the Fund shall be used to cater for the administration expenses.

Establishment of the Board

6. (1) There is established a Board to be known as the Machakos County Co-operative Enterprise Development Fund Board which shall consist of—

- (a) the County Chief Officer in the County department for the time being responsible for matters relating to co-operative development or a representative appointed in writing;
 - (b) the County Chief Officer in the County department for the time being responsible for Finance and Economic Planning or a representative appointed in writing;
 - (c) the Chief Officer responsible for matters relating to legal affairs in the county
 - (d) four competitively and transparently selected persons not being public officers —
 - (i) one of whom shall be the chairperson of the Board;
 - (ii) two shall be representatives of co-operative societies appointed by the County Executive Committee Member; and
 - (iii) one person with experience and knowledge of co-operative matters appointed by the County Executive Committee Member.
 - (e) the administrator of the Fund, who shall be the secretary to the Committee.
- (3) A person shall be qualified for appointment under subsection (1) (d) if that person —

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least three years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

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

(5) The Board shall, at its first sitting, elect a vice-chairperson from among the members.

Procedure for appointment of Board Members

7. (1) The members referred to in Sub Section 6 (1)(d) shall be recruited and nominated for appointment through a competitive process by the County Public Service Board.

(2) The names of members nominated under Sub- Section 7(1) shall be forwarded to the Governor and subsequently to the County Assembly for vetting and approval.

(3) In nominating and appointing members under Section 6(1)(d), the County Public Service Board and the Governor shall—

- (a) uphold the principle of one-third gender representation; and
- (b) ensure geographical representativeness of the county;

(4) The appointment of persons under Section 6(1) (d) shall be by a notice in the gazette.

(5) The members referred to in sub-section 6(1)(d) shall hold office for a term of five years shall not be eligible for re-appointment.

Corporate status of the Board

8. (1) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(2) The conduct and regulation of the business and affairs of the Board shall be as provided for in the First Schedule.

Functions of the Committee

9. functions of the Board shall —

- (a) formulate standards, procedures and policy guidelines on lending by the Fund;
- (b) manage the Fund in accordance with this Act;
- (c) receive, consider and approve loan applications from eligible applicants in accordance with this Act;
- (d) recover matured loans; and
- (e) perform any other function as may be conferred on it by this Act or any other law.

Powers of the Board

10. (1) The Board shall have all the powers necessary for the proper performance of its functions under the Act.

(2) Without prejudice to the generality of the provisions of sub section (1), the Board shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Board in such manner and for such purposes as best promotes the purpose for which the Board is established;
- (c) subject to the provisions of this Act, exercise discretion in the application of the Fund;
- (d) subject to the approval of the County Executive Committee Member, mobilize resources and invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine;

- (e) open a bank account for the funds of the Board into which all money received by the Board shall be paid in the first instance and out of which all payments made by the Board shall be made;
- (f) maintain a register of co-operative societies for purposes of lending money as the Board may determine; and
- (g) exercise such other lawful powers as may be conferred by this Act or other law.

(3) The Board may if it considers it necessary, partner with any person or institution for purposes of achieving its objectives under the Act, including partnering with banks, financial institutions and the credit reference bureaus in enforcing repayment of the loans.

Terms and conditions of service

11. The members of the Board shall be paid such allowances as the County Public Service Board may, on the advice with the Salaries Remuneration Commission, determine.

Delegation by the Board

12. (1) The Board may establish not more than two committees at any one time as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt into the membership of a committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the committee.

(3) The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the discharge of functions or exercise of powers under this Act or under any other law.

Vacation from office

13. (1) A person appointed under section 6 (d) ceases to be a member of the Board if the person—

- (a) resigns;
- (b) is absent from three consecutive meetings of the Board without a reasonable explanation;
- (c) is adjudged bankrupt by a competent court of jurisdiction;
- (d) commits a criminal offence punishable by imprisonment for six months; or
- (e) dies.

(2) The chairperson or a member of the Board may resign from office by written notification addressed to the appointing authority.

Removal from office

14. (1) A member of the Board may be removed from office only for—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office; or
- (d) incompetence or neglect of duty.

(2) The Governor or County Executive Committee Member may, upon the recommendation of the Board terminate the appointment of a chairperson or member of the Board as the case may be, on the grounds specified under subsection (1).

(3) Where the office of a member becomes vacant under subsection (1), the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.

Administration of the Fund

15. (1) The County Executive Committee Member shall designate, from among officers of the county government, an administrator of the Fund in accordance with section 116 (2) of Public Finance Management Act, 2012.

(2) The officer administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) implement terms and conditions as may be imposed by the Board concerning the administration of the Fund;
- (c) cause to be kept proper books of accounts and other records in relation to the Fund and for loan financed from the Fund;
- (d) prepare financial statements in accordance with section 23 of this Act and section 116 of the Public Finance Management Act;
- (e) furnish such additional information as may be proper and sufficient for the purpose of examination and audit by the Auditor-General; and

- (f) be head of staff of the Fund and answerable to the Board on the administration and management of the Fund.

(3) The County Public Service Board shall, upon request by the Board facilitate secondment to the Fund of such officers from the County Public Service as may be necessary for the proper and effective management of the Fund.

(4) The terms and conditions of service of staff shall be as determined by the County Service Public Board on the advice of the Salaries and Remuneration Commission.

PART III—APPLICATION, GRANT AND REPAYMENT OF LOANS

Eligibility criteria

16. (1) An applicant may only qualify for a loan under this Act if—

- (a) it is a cooperative society registered under the Co-operative Societies Act;
- (b) is based and operates within the county; and
- (c) holds a bank account in the name of the society.

(2) In order to ensure equitable distribution of the benefits of the Fund, the Board may set aside specified amounts to be lent to—

- (a) ward-based co-operative societies;
- (b) sub-county-based co-operative societies; and
- (c) county-wide co-operative societies.

Lodging and processing of applications

17. (1) A co-operative society which intends to apply for a loan from the Fund shall present to the Board an application in the prescribed form.

(2) An application under sub-regulation (1) shall be accompanied by—

- (a) a certified copy of the registration certificate;
- (b) minutes of a general meeting of the cooperative society authorizing the cooperative society to borrow;
- (c) proof of an existing bank account;
- (d) a statement on the nature of business; and
- (e) business plan, where applicable.

(3) The administrator shall satisfy himself of the applicant's financial status and capacity to repay and where so satisfied shall forward the application to the Board for consideration.

(4) The decision of the Board shall be contained in the minutes of the Board and shall specify the approved amount and repayment period.

(5) If the Board approves the application, the applicant shall enter into an agreement in such terms as the Board may determine.

(6) The loan shall be disbursed by the Board directly or through a financial institution identified by the Board and contracted for that purpose.

Maximum loan limits

18. (1) The maximum loan to any borrower shall be subject to determination by the Board.

(2) The Board may approve loans on a graduated scale to meet the different requirements of start-up businesses, established businesses and to promote priority sectors.

(3) The Board may issue guidelines from time to time for purposes of carrying out its mandate.

Security, guarantee and lien

19. (1) A security for loan may take the form of an asset that the borrower may offer to secure the loan but nothing stops the Board from requiring a borrower to be guaranteed by another person in lieu of a physical security.

(2) The Board may have a charge registered on the property securing a loan and shall be entitled to have its name entered in all documents of title for such property.

(3) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the county government;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the committee; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the county government to sell the property in case of default in payment.

- (4) During the loan repayment period, every borrower shall
- (a) maintain the property in a satisfactory state of repair; and
 - (b) all legal documentation shall be supervised by the Board.

Default

20. (1) Where the borrower is in breach of the terms of the loan agreement, the Board may sell the charged property, if any, by public auction or private treaty or demand any guarantor to make good any loss.

(2) At the end of every financial year, or such other time as the borrower may request, the administrator of the Fund shall furnish a statement to every borrower indicating the record of repayments, balance on the principal sum and accrued interest.

Breach of terms and conditions Cap 42

21. (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 the Board may—

- (a) recover loan from the cooperative society as a civil debt under the Debts (Summary Recovery) Act; and
- (b) enforce or realize any security relating to the loan.

(2) The Board may, in exercise of the powers conferred by subsection (1), engage the services of private debt collector.

(3) A borrower shall prepare proper books of accounts and shall furnish the Board with annual audited accounts for purposes of monitoring.

Interest rate

22. (1) A loan granted to an applicant under this Act shall be repaid with an interest rate to be prescribed by the Board.

(2) The interest charged under paragraph (1) shall be payable by the borrower.

Maximum repayment period

23. A loan granted under this Act shall be fully repaid within a period of five years or such lesser period as the Board may, in writing authorize.

Discharge of a loan

24. (1) Upon full repayment of the loan, a signed loan discharge certificate in the prescribed form shall be issued to the borrower and a copy thereof shall be retained by the Board.

(2) A loan discharge certificate shall release the borrower from any further financial obligation in respect of the loan.

PART IV—GENERAL PROVISIONS

Annual financial statements

25. (1) The administrator of the Fund shall, not later than three months after the end of every financial year, prepare, sign and transmit to the Auditor-General annual financial statements in accordance with section 116 of the Public Finance Management Act.

(2) The statement prepared under subsection (1) shall include the following information—

- (a) the total amount of the Fund for the respective year;
- (b) the date and the amount of each disbursement;
- (c) the name of the person or co-operative society to whom the disbursement was made;
- (d) the purpose for which the disbursement was made;
- (e) whether the person to whom the payment was made spent the money for that purpose and a statement made to that effect;
- (f) if the person to whom the payment has been made has not spent the money for that purpose, a statement specifying the reasons for not having done so;
- (g) a balance sheet showing in detail the assets and liabilities of the Board; and
- (h) the unspent balance as at the end of the financial year.

Common seal

26. All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Board—

- (a) where they are required to be under seal, if sealed with the common seal of the Board and authenticated by the chairperson or the secretary;
- (b) they are not required to be under seal, if executed in that behalf by a member authorized by the Board for that purpose; and
- (c) a deed, instrument, contract or other document executed in accordance with subsection (b) shall be effective in law to bind the Board and its successors and may be varied or discharged in the same manner as that in which it was executed.

Power to make regulations

27. (1) The County Executive Committee Member responsible for cooperative societies may in consultation with the Board make Regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to subsection (1), the regulations may prescribe—

- (a) the procedures relating to lodging of applications, processing and approval of applications for loans;
- (b) the preparation and maintenance of borrowers' records;
- (c) forms; and
- (d) dealing with loan defaulters.

Winding up of the Fund

28. In the event of winding up of the Fund, the cash balances shall be transferred to the County Exchequer Account while other assets of the Fund shall be transferred to the County Department for the time being responsible for matters relating to co-operative sector.

FIRST SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings of the Board

1. (1) The Board 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) The chairperson shall convene the ordinary meetings of the Board at the premises of the Authority.

(3) Despite the provisions of sub-paragraph (1), the chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Board.

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the chief executive officer.

(5) The quorum for the conduct of the business of the Board shall be five including the chairperson or the person presiding.

(6) The chairperson and his absence the vice-chairperson shall preside at every meeting of the Board and in the absence of both, the members of the Board present shall elect one person from among them to preside over the meeting and such person shall have all the powers of the chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

Disclosure of interest

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed

contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his or her interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

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

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Board by the chairperson secretary or other member specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The Machakos County Co-operative Enterprise Development Fund Bill, 2018 is intended to establish the Co-operative Enterprise Development Fund to provide loans to cooperative societies in the county. The Fund shall be a revolving fund which shall be charging minimum interest on the loans.

The Fund shall be managed by a Board comprising of select chief officers, representative from cooperative societies and experts in cooperative matters.

It also provides for the procedures of applying for loan, security for loans and repayment.

The structure of the Bill is as follows:

Part I (Sections 1-3) provides for the preliminary matters including short title, interpretation of terms and the broad objects and purpose of the Bill. The object is to establish a legislative framework to facilitate credit for co-operative societies within the county, promote business and economic development and to establish procedures for application, processing and approval of the loans.

Part II (Section 4-14) establishes the Fund as a revolving fund to be managed by the Board which is a body corporate for purposes of entering into contractual arrangements with borrowers and other agencies. The Board shall be comprised of select public officers and four non-public officer members. This Part also provides for the functions and powers of the Board, appointment, terms of service for the members, and removal of members. The Part also provides for the appointment of the administrator of the Fund, his duties and responsibilities and other employees of the Board.

Part III (Sections 15-23) provides for the procedures of applying, processing the application by the Board and approval. It provides that for a co-operative society to be eligible for the loan, it has to be registered as such, operate within the county, hold a bank account in its name and be comprised of persons of at least eighteen years. It is also provided that the Board shall prescribe terms and conditions which every borrower must adhere to. The Board shall prescribe terms and condition of the loan. Upon full repayment, a borrower shall be issued with a loan discharge certificate.

Part IV (Sections 24-26) provides for general provisions including preparation of financial statements, and common seal. Finally, this Part provides for the power to make regulations by the County Executive Committee member.



This Bill is a money Bill within the meaning of Section 21(4) of the County Governments Act, 2012 and its enactment shall occasion additional expenditure of public funds which shall be provided for in the estimates.

The Bill does not contain provisions limiting the fundamental rights and freedoms set out under the Constitution.

Dated the 27th August, 2019.

JOHN NZOMO MUSYIMI,
Member of County Assembly.