

SPECIAL ISSUE

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REPUBLIC OF KENYA

***MOMBASA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

NAIROBI, 26th October, 2015

CONTENT

Bill for Introduction into the County Assembly of Mombasa—

PAGE

The Mombasa County Trade Revolving Fund Bill, 2015 1

**THE MOMBASA COUNTY TRADE REVOLVING FUND BILL,
2015**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and Commencement date.
- 2—Interpretation.
- 3—Objects.

PART II—THE FUND AND THE BOARD

- 4—Establishment and Administration of the Fund.
- 5—Sources of the Fund.
- 6—Establishment of the Board.
- 7—Qualification of the Board Members.
- 8—Tenure.
- 9—Removal and vacation of the office.
- 10—Functions of the Board.
- 11—Fund Manager.
- 12—Functions of the fund Manager.
- 13—Financial Institution to disburse and recover funds.

PART III—OPERATIONS OF THE FUND

- 14—Qualifications for applicants.
- 15—Borrowing limits.
- 16—Collateral.
- 17—Growth on loan.
- 18—Repayment period.

PART IV—FINANCIAL MANAGEMENT

- 19—Fund Account.
- 20—Annual Reports.
- 21—Audit.

PART V—RESTRICTIONS AND RECOVERY OF LOANS

- 22—Default on repayment.

23—Recovery of the loan.

24—Diversion of loan funds.

25—Regulations.

**THE MOMBASA COUNTY TRADE REVOLVING
FUND BILL, 2015**

A Bill for

**AN ACT of the County Assembly of Mombasa for the
establishment, management and administration of
the Mombasa County Trade Revolving Fund, and
for connected purposes**

ENACTED by the County Assembly of Mombasa, as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Mombasa County Trade Revolving Fund Act, 2015 and shall come into operation when assented to by the Governor and published in the *Kenya Gazette*. Short title and Commencement.

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

“Beneficiary” means natural or legal person whose application for a loan has been approved by the Board;

“Board” means a body established under Section 4 and constituted as per Section 6 of this Act;

“Constitution” means the Constitution of Kenya, 2010;

“County Executive Committee Member” means an individual holding an executive office in the County Government responsible for Industry, Trade and Investment matters or their equivalent, as provided for under Article 179 (2) (b) of the Constitution and Sections 35 and 36 of the County Government Act, 2012;

“County” means the Mombasa County;

“County Government” means the County Government of Mombasa as constituted under the Constitution;

“County Chief Officer” means an individual in the service of the County Government responsible for industry, trade and investment matters or their equivalent, appointed as per Section 45 of the County Governments Act, 2012;

“Secretary” means a person in the service of the County Government and appointed as provided for under this Act.

3. The object and purpose of the Act is to—

Objects.

- (a) catalyze wealth creation;
- (b) establish the Mombasa County Trade Revolving Fund Board;
- (c) establish the mechanisms for the provision of capital to—
 - (i) successful candidates engaged in employment-creating activities that contribute to value addition of raw materials;
 - (ii) businesses that seek to expand their production from existing capacities;
 - (iii) activities that stimulate and promote both internal and international trade.
 - (iv) new business start ups.
- (d) to nurture and grow businesses in the County;
- (e) to provide business management services to County business people by providing administrative services at the County with regard to the trade revolving fund.

**PART II—ESTABLISHMENT OF THE FUND
AND THE BOARD**

4. (1) There is established a Fund to be known as the Trade Revolving Fund.

Establishment and
Administration of
the Fund.

(2) The Fund shall be administered by the Mombasa County Government at the County and Sub-County levels.

(3) At the County level, there shall be a Fund Management Office, under the relevant Directorate as approved by the County Chief Officer, headed by the Fund Manager who will also be Secretary to the Board.

(4) At the Sub-County levels, there shall be units managed by officers appointed by the County Public Service Board who shall discharge the administrative services of facilitating applications to the Fund, training of successful applicants on business ethics, credit management and provision of general business development and business management services.

5. The Fund shall consist of monies from —

- (a) annual allocations by the County Assembly of an amount of not less than 1% (one per centum) of the latest audited county government local revenue collected in a financial year;
- (b) grants.
- (c) loan repayments.
- (d) any monies accruing to or received by the Board from any other source.

6. (1) There is established a Board to be known as the Trade Revolving Fund Board.

Establishment of the Board.

(2) The Board shall comprise of seven members drawn from the County Government and the members of the public as follows —

- (a) a chairperson appointed by the Governor;
- (b) three members appointed by the County Executive Committee member from any of the following categories —
 - (i) professional association;
 - (ii) business community;
 - (iii) persons with disabilities;
 - (iv) faith based organization
 - (v) co-operative movement within the County.
- (c) chief officer or his representative for the time being responsible for matters relating to —
 - (i) Finance and Economic Planning
 - (ii) Youth, Gender and Sports
 - (iii) Trade and Investment,

(3) Appointment of board members under subsection (2) above shall be based on the principle that not more than two-thirds of the membership shall be of the same gender.

7. (1) Any person appointed to the board shall meet the following requirements —

Qualifications of Board Members.

- (a) be a citizen of Kenya;

(b) meets chapter six of the constitution.

(2) The chairperson shall possess a minimum qualification of a bachelors degree from a recognized university with at least five years working experience in the relevant field.

(3) The members appointed under section 6 (2) (b) (ii), (iii), (iv) and (v) shall have at least five years experience in the field of competence on which basis they are appointed

8. A member of the board appointed under section 6 Tenure.
 (2) (a) and (b) shall hold office for a term of three years but shall be eligible for reappointment for one further term of three years.

9. A member of the board may vacate or be removed Removal and Vacation of Office.
 from office by any of the following ways—

- (a) upon expiry of the term of office;
- (b) he or she submits his or her written resignation to the appointing authority;
- (c) he or she unable to perform his or her duties due to physical or mental incapacity as certified by a medical practitioner.
- (d) he or she has been adjudged bankrupt by a competent court of law;
- (e) he or she has been convicted of a criminal offence whose punishment is imprisonment for a period of at least six months;
- (f) he or she is found by a court of law to have contravened Chapter Six of the Constitution; or
- (g) he or she no longer fulfills the requirements considered at the time of his/her appointment.

10. (1) The functions of the Board shall be —

Functions of the Board.

- (a) to develop conventional and shariah compliant policies, procedures and manuals to operationalise the Fund;
- (b) to ensure timely and efficient processing of loan applications;
- (c) to ensure efficient management of the Fund;

- (d) to receive and discuss annual reports and returns;
- (e) ensure the compilation of proper records, returns and reports;
- (f) receive and address complaints and disputes and take any appropriate action; or
- (g) perform such other duties as may be deemed necessary from time to time for the proper management of the Fund.

(2) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the same to the County Executive Committee member.

(3) The board members shall be paid allowances as determined by the Salaries and Remuneration Commission.

11. (1) There shall be a Fund Manager under the County Department of Trade to be competitively appointed by the County Public Service Board. Fund Manager.

(2) The Fund shall be administered by the Board in consultation with the county executive committee member.

(3) The Fund Manager shall be the Secretary to the board.

12. The Fund Manager shall —

Functions of the
Manager.

- (a) identify applicants within the County using approved guidelines;
- (b) receive applications for loans;
- (c) evaluate applications based on the approved guidelines;
- (d) receive project proposals for funding and transmit to the board for consideration;
- (e) convey decisions made by the board;
- (f) recommend to the appointed disbursing agent to release the funds to successful applicants;
- (g) undertake monitoring activities, including making official impromptu visits to the beneficiaries;
- (h) manage and oversee the implementation of the fund;

- (i) compile, update and forward quarterly and annual progress reports on implementation of the fund to the board; and
- (j) provide oversight to the disbursements of funds.

13. There shall be a financial institution appointed competitively to disburse and recover funds.

Financial Institution
to disburse and
recover Funds.

PART III—OPERATION OF THE FUND

14. (1) The Fund shall be available to candidates who are either natural persons or juristic persons duly licensed as business operators within the County.

Qualifications of
Applicants.

(2) The qualifying candidates may have—

- (a) an already existing business as a going concern;
- (b) a new business start up.

(3) Any application shall be assessed by the Board to ascertain viability of the business and prior to the consideration of the approval by the Board.

(4) Beneficiaries may undergo business management training facilitated by the board on business ethics before issuance of loan.

(5) Loans advanced to beneficiaries shall be used for the purpose applied for.

15. The Board shall advance loans to applicants as follows—

Borrowing Limits.

- (a) individual business persons can borrow a maximum of KSh.1,500,000;
- (b) legal persons can borrow a maximum of KSh. 3,000,000.

16. Any successful applicant shall be expected to guarantee the loan advanced to him/her as hereunder—

Collateral.

(1) A natural person shall be required to provide any of the following as collateral—

- (a) title deed;
- (b) lease certificates;
- (c) life insurance certificate;
- (d) share certificate from Central Depository and Settlement Corporation Limited (CDSC);

- (e) personal guarantee;
- (f) any other proof of asset ownership.

Without prejudice to the foregoing, an applicant may provide collateral of a title deed or allotment letter bearing the names of a third party so long as the third party has given consent for such use in the presence of an Advocate of the High Court of Kenya.

(2) the collateral for a legal person shall be in any of the following forms—

- (a) in the case of co-operatives; endorsement by members borrowing limits and the assets to be attached coupled with certification by the County Co-operatives Office;
- (b) in the case of associations, endorsement by members authorizing guarantee of loans by assets of the association;

Without prejudice to foregoing, members of an association may be guaranteed by fellow members of the same association subject to endorsement by the executive committee of the association;

- (c) For SACCO's individual member savings for individual borrowers and the SACCO reserves for the cooperative may be used as collateral if the Board so approves.

17. Any loan shall attract an interest rate of at least five (5) per centum per annum on a reducing balance or in accordance to approved Shariah compliant scheme. Growth on Loan.

18. Any loan beneficiary—

Repayment Period.

- (a) may on application have a grace period of three months from the date of loan disbursement before commencement of monthly repayments;
- (b) shall pay the full amount of the loan with interest or profits within 24 months after commencement of payment.

PART IV—FINANCIAL MANAGEMENT

19. The Board shall maintain a Fund Account in a reputable commercial bank in Kenya Shillings. Fund Account

20. The Board shall prepare annual reports on management of the Fund within three months after the close of the financial year for consideration by the County Executive Committee for the approval by the County Assembly.

Annual Reports.

PART V—RESTRICTIONS AND RECOVERY OF LOAN

22. Any default on repayment of a loan for a period of three consecutive months shall attract a penalty of 10% interest on the accumulated arrears.

Default on
Repayment.

23. Any default of more than six months shall be referred to a reputable debt collector by the board for recovery at the defaulter's cost and shall attract 15% interest on accumulated arrears.

Recovery of Loans.

24. Any beneficiary who diverts loan funds to other activities other than approved shall be blacklisted.

Diversion of Loan
Funds.

25. The County Executive Committee Member may make regulations for the better carrying out of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act

Regulations.

MEMORANDUM OF REASONS AND OBJECTS

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa County Trade Revolving Fund Bill, 2015 and its direction that the Bill be published for introduction in the County Assembly.

The Fourth Schedule part 2, paragraph 7 of the Constitution of Kenya, 2010 devolves trade development and regulation. County Assembly of Mombasa therefore has the mandate to pass a law in regard to the revolving fund which shall aid people develop in trade within the county.

Part I of this Bill names the proposed Act, defines words and expressions used in the Bill. It also provides for the commencement date and the main objectives of the Act.

Part II of this Bill establishes the fund and provides on how it will be administered and managed. It shall be administered at the county and sub-county level and A Board shall manage the funds with the expertise of the fund manager.

Part III of this Bill provides for the operations of the fund. The qualifications of the applicants, borrowing limits and repayment period which is twenty four months are indicated therein.

Part IV This is the financial management part that enables the fund to open an account. Further, annual reports should be done and auditing.

Part V of this Bill provides penalties for defaulters. Those who default in paying the loans for three months shall pay 10% interest on accumulated arrears and those who default for 6 months shall pay 15% interest. The County Executive Committee member is also given the powers to ensure that regulations are drafted.

RECOMMENDATIONS

The Assembly is requested to:

- (a) note the contents of this Memorandum;
- (b) approve the Mombasa County Trade Revolving Fund Bill, 2015 annexed to this Memorandum.

IBRAHIM KONDO,
Chairperson, Committee on Trade.

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