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TURKANA COUNTY ACTS, 2019

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ACT, 2019**

No. 8 of 2019

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**THE TURKANA COUNTY BIASHARA FUND (AMENDMENT)
ACT, 2019**

**AN ACT of County Assembly to provide for the establishment of the
Turkana County Biashara Fund Board, and for matters
incidental to and connected therewith**

ENACTED by the County Assembly of Turkana as follows—

PART I—PRELIMINARY

Short Title.

1. This Act may be cited as the Turkana County Biashara Fund (Amendment) Act, 2019.

Interpretation

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

“board” means the Management Board of the Fund constituted under section 8

“financial year” means the financial year of the Fund as provided for under section 18

“Fund” means the Turkana County Biashara Fund established under section 5

“Member of the Board” means a person nominated under section 8

“Inspector of the Board” means an Officer authorized to appraise loan applications and/or facilitate repayments or recoveries

“governor” means the Governor of Turkana County

“executive committee member” means the Executive Member responsible for trade and enterprise development.

“Chief Officer” means the Chief officer responsible for trade and enterprise development.

“Director” means the director responsible for trade and enterprise development.

Object and purpose of this County Act

3. The objects and purpose of this County Act are to provide for—

- (a) the establishment, functions, powers and responsibilities of the turkana county biashara fund board

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- (b) to facilitate the improvement of business development and self-reliance by boosting the growth of micro entrepreneurs in the county.

Guiding principles

4. In the performance of the functions and exercise of powers under this Act, the Fund shall be guided by the values and principles set out in Articles 10 and 232 of the Constitution.

**PART II - ESTABLISHMENT AND FUNCTIONS OF THE
TURKANA COUNTY BIASHARA FUND**

Establishment of the Fund

5. (1) There is hereby established a Fund to be known as the Turkana County Biashara Fund, which shall be a body corporate with perpetual succession and a common seal subject to regulation 197(1) (i) of the Public Finance Management (County Government) Regulations 2015.

(2) The Fund 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 Act, and which may lawfully be done or performed by a body corporate.

Functions of the Fund

6. (1) provide affordable and competitive credit to both formal and informal traders involved in production and trade in goods and services within Turkana County

(2) Without prejudice to the generality of the provisions of subsection (1), the Fund shall—

- (a) provide an opportunity to small scale entrepreneurs to gain commercial experience to enable them play their part in industrial and commercial development of the county
- (b) provide enterprise development services;
- (c) enhance the small and medium enterprises' competitiveness as they graduate into bigger vibrant enterprises; and

- (d) Perform any other lawful function for purposes of promoting enterprise and entrepreneurship development in the county.

The Fund Official Headquarters

7. (1) The headquarters of the Fund shall be in the office of the County Executive Committee Member responsible for matters relating to Trade and Enterprise Development, in Turkana County, at Lodwar Town.

Establishment of the Fund Management Board

8. (1) There is established a board to be known as the Turkana County Biashara Fund Management Board.

(2) The management of the Fund shall be vested in a Board established in (1) above

(3) The Board shall consist of—

(a) a Chairperson, not being public officer, appointed by the Governor on the recommendation of the Executive Committee Member responsible for Trade and Enterprise Development with the approval of the County Assembly;

(aa) Chief Officer responsible for matters relating to trade and enterprise development

(b) the officer administering the fund who shall be an ex-officio member and secretary to the Board;

(c) the chairperson of the Turkana County Youth Council appointed as per the Turkana County Youth Council Act of 2014;

(d) The Chairperson of the Kenya National Chamber of Commerce and Industry, Turkana County,

(e) the Director of Trade and Enterprise Development;

(f) two persons from the Business Community in the county appointed by the Executive Committee Member one of whom shall be a Person With Disability and a Woman;

(4) The appointment of the chairperson under subsection (3) (a) and members under subsection (3)(f) shall be subject to such persons—

(a) satisfying the requirements of Chapter Six of the constitution; and

(b) on account of their training and experience-

(i) having at least five years' experience in distinguished career in financial, business or economic matters; or

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- (ii) being knowledgeable on trade and industry or enterprise development matters; or
- (iii) having experience in matters connected with, and challenges experienced by, small and medium enterprises;
- (iv) complying with other criteria the County Executive Committee Member may prescribe.

(5) The appointment of the chairperson under subsection (3) (a) and members under subsection (3)(f) shall be by notice in the Kenya Gazette.

(6) The chairperson and members appointed under section 8 (3)(a) and (f) shall serve a term of three years and shall be eligible for re-appointment for one further term.

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

- (a) if not being an ex officio member resigns in writing to the appointing authority through the Secretary;
- (b) if the Board is satisfied that such a member, by reason of physical or mental infirmity, is unable to execute the functions of office;
- (c) if the member has been adjudged bankrupt by a competent court of law, or has committed a criminal offence which directly or otherwise reflects adversely on suitability to be a member of the Board;
- (d) non-attendance of five consecutive meetings without cause; or
- (e) upon death.

(8) Where the office of a member becomes vacant under subsection (7), the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.

Secretary to the Board

9. (1) There shall be an Officer administering the fund who shall be appointed from the County public service and who has—

- (a) at least a university degree in finance, accounting, engineering, economics, community development, law, or a related field from a recognized university
- (b) at least five years working experience in public finance or any other relevant field;

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(2) The Officer administering the Fund shall, be the Chief Executive Officer of the Fund and Secretary to the Board and shall subject to the directions of the Board:-

- (a) supervise and control the day to day administration of the fund;
- (b) be responsible for the day-to-day management of the affairs and staff of the fund;
- (c) prepare quarterly reports on the movement of the funds as appropriate for submission to the county assembly;
- (d) keep or cause to be kept proper books of accounts and other books and records related to the fund;
- (e) prepare, sign and transmit to the auditor general accounts of the fund in accordance with the public audit act; and
- (f) perform any other duties that may be assigned to him by the board from time to time;

(3) The officer administering the fund shall —

- (a) be appointed by the executive committee member responsible for finance
- (b) serve a term of four years but shall be eligible for reappointment for one further term;

(4) The County Executive Committee Member responsible for Trade and Enterprise Development shall, upon request by the Board facilitate secondment to the Fund of such officers from the County Public Service as may be appropriate and necessary for proper management of the Fund, and the Board may designate any of the officers seconded to be officers of the Fund in respect of one or more sub-counties as may be appropriate.

Functions and Powers of the Board

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

(2) Without prejudice to the generality of the provisions of subsection (1), the Board shall have authority —

- (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 Fund;
- (c) to set the criteria and conditions governing the granting of loans, including the rate of interest and recovery of loans;

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- (d) to receive any gifts, donations, grants or endowments made to the Fund, 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 Fund 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
- (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 Fund 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, 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 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 Act.

Meetings of the Board

11.(1) The Chairperson shall call for and preside in all the meetings of the Board and in the event of absence of the Chairperson, the members

present shall elect from one of themselves to preside at that particular meeting or part thereof.

(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 four members, provided that —

- (a) the quorum at any requisitioned meeting shall be any number of the members of the Board entitled to attend such meeting; and
- (b) the meeting shall be conducted in accordance to the procedure prescribed in the regulations made under this Act.

(4) All decisions of the Board shall be made by a simple majority of the members present and voting.

(5) The Chairperson shall, in case of a tie have 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— ADMINISTRATION OF THE FUND

Revenue and expenditure of the Fund

12. There shall be credited to the Fund—

- (a) maximum of three percent of monies allocated and appropriated for development for three years;
- (b) interest of three percent per annum on 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) The total administration expenditure of the funds approved by the Board shall be a maximum of three percent of the monies credited to the Fund.

Administration of the Fund

13. (1) Every Trader wishing to be considered for the grant of a loan shall make an application to the Board in the prescribed form.

(2) Every Trader who has been awarded such loan shall be issued with a loanee' Identification File Number by the Board.

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(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.

(4) Requirements for Loan Applications—

- (a) loans may be made to Kenyan micro and small entrepreneurs who—
 - (i) have established and licensed businesses;
 - (ii) keep Books of account.
- (b) An applicant must also meet the following conditions---
 - (i) Aged above 18 years;
 - (ii) Kenyan citizen;
- (c) no further loan may be granted to an applicant who has not repaid a previous loan.

(5) Purposes for which loans may be granted include purchase of machinery, purchase of stock, purchase of produce, value addition and trade services.

(6) Without prejudice to the generality of the foregoing, loan may be granted for the purchase of motor vehicles, erection of buildings and purchase of land.

Conditions for grant of loan

14. (1) The Board may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to any such person 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 and require the

applicant 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 loan offer under subsection (2) within the prescribed period, the loan offer shall be deemed to have lapsed.

(4) In case of default by the loanee in repaying the loan, the guarantor shall be liable to repay the loan and any interest accrued thereon.

(5) The Loan shall be charged at such an interest rate as shall be prescribed from time to time by the Board;

(6) Repayment of loans may be made up to a maximum period of 2 years. However, in exceptional cases, the period of repayment may vary depending on the agreement between the board and the applicant, but shall not exceed two years which must be expressly stated in the Loan Agreement.

Obligations of the Loanees

15. (1) A loanee shall be required to repay the loan amount and the interest accrued thereon in accordance with this Act and the Regulations thereunder.

General provisions

16. (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 in respect to a particular loan, the Board may forthwith—

- (a) recover from the person to whom the loan was made or his personal representative as a civil debt under the debts (summary recovery) act (cap. 42 laws of kenya) the amount of the loan, or the amount thereof then remaining unpaid, together with interest thereon;
- (b) enforce or realize any security relating thereto.

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

PART IV— OFFICERS OF THE BOARD

Inspectors of the Board

17.(1) Every inspector appointed by the Board shall for the purposes of ascertaining whether the provisions of this Act have been complied with within any premises or place liable to inspection under this section have power to enter such premises or place at all reasonable times and to examine every person whom he finds therein.

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(2) Any person who—

- (a) willfully delays or obstructs any inspector in the exercise of any power under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section,

shall be guilty of an offence:

Provided that no person shall be required under this section to answer any question or to give any information which tends to incriminate himself/herself.

(3) Every inspector shall, upon seeking admission to any premises for the purposes of inspection, produce his letter of authorization issued by the Board.

PART V— FINANCIAL PROVISIONS

Financial year of the Fund

18. 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.

Annual estimates

19.(1) The Board shall submit to the Executive Committee Member an estimate of its income and expenditure during the succeeding financial year one month before the commencement of the financial year.

(2) The Executive Committee Member shall communicate to the Fund his 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 Fund for the financial year and shall provide for—

- (a) the cost of administration of the Fund 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 Fund;
- (c) the development and maintenance of any property vested in the Fund.

(4) Except with the approval of the County Executive Committee Member responsible for matters relating to Trade, no expenditure shall be incurred for the purposes of the Fund except in accordance with the annual estimates approved under subsection (2).

Accounts and Audit

20. (1) The Fund shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the County Executive Committee Member responsible for Trade and Enterprise Development may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the County Executive Committee responsible for Finance –

- (a) a balance sheet showing in detail the assets and liabilities of the Fund
- (b) such other statements of accounts as the County Executive Committee Member may approve.

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the County Executive Committee responsible for Finance in accordance with the Public Audit Act.

(3) The Fund shall submit to the County Executive Committee responsible for Finance all books and accounts of the Loans Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General (Corporations) shall be entitled to require from any member, officer, employee or agent of the Fund such information and explanation as he may consider necessary for the performance of his duties.

(4) The accounts of the Fund shall be audited by the Internal Auditor at Treasury or an auditor appointed by the Fund with the approval of the Executive Member for Finance and Economic Planning.

Annual report of the Board

21. The Board shall, immediately 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 (Corporations) and certified copies of the accounts referred to in this section.

PART VI— MISCELLANEOUS PROVISIONS

Common Seal of the Fund

22. (1) The common seal of the Fund shall be kept in the custody of the Director responsible for Trade and used except upon the order of the said Director;

(2) The common seal shall, when affixed to a document and authenticated, be judicially and officially noticed, and unless the contrary is proved, any order or authorization by the Fund under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the fund shall be authenticated by the signatures of the Chairperson or the County Director of Trade & Enterprise Development.

(4) in the absence of the Chairperson or the County Director of Trade & Enterprise Development, the Board shall nominate one of the members to authenticate the common seal of the fund on behalf of the County Director or the Chairman;

Signing on behalf of the Loans Board

23. (1) All letters and instruments written or made by or on behalf of the Fund, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the County Director of Trade & Enterprise Development.

(2) In the absence of the County Director of Trade and Enterprise Development, the Chairperson or a member of the Loans Board, authorized as such, may sign any letter or instrument.

Secrecy, offences and penalties

24.(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.

(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 subsection (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.

Protection from personal liability

25. No matter or action done by the Chairman 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 chairman, member, officer, employee or agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

Liability of the Board for damages

26. 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.

Regulations

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

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