

SPECIAL ISSUE

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REPUBLIC OF KENYA

**UASIN GISHU COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 29th April, 2016

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ACT, 2016**

No. 3 of 2016

Date of Assent: 23rd December 2014

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**THE CO-OPERATIVE ENTERPRISE DEVELOPMENT FUND,
ACT, 2016**

AN ACT of the County Assembly of Uasin Gishu to establish an Enterprise Development Fund for the Co-operative sector in Uasin Gishu County by providing low-interest loans to cooperative institutions that seek to promote the welfare and economic uplifting of the people of Uasin Gishu County and for connected purposes.

ENACTED by the County Assembly of Uasin Gishu, as follows—

PART I— PRELIMINARY

Short title

1. This Act may be cited as the Cooperative Enterprise Development Fund Act, 2016 and shall come into operation on such date as the Member of the Executive Committee, with the concurrence of the Governor, may appoint.

Interpretation

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

‘applicant’ means a cooperative sector institution operating in Uasin Gishu County.

‘Committee’ means the Cooperative Enterprise Development Fund Committee established under section 5 of this Act;

‘Governor’ means the Governor of Uasin Gishu County Government;

‘loanee’ means a cooperative institution whose loan request has been approved and granted under this Act;

‘Member of the Executive Committee’ means the Member of the Executive Committee responsible for the Cooperative Sector;

‘Prescribed’ means prescribed by the Member of the Executive Committee;

‘Unit’ means the Cooperative Enterprise Development Fund Unit established under section 13—

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

Establishment of the Fund

3. (1). There is hereby established a Fund to be known as the Cooperative Enterprise Development Fund.

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(2) The Fund shall be a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract, and to sue and be sued in its own name.

Objectives of the Fund

4. The object and the purpose of the Fund shall be—
- (a) to provide funds to be used for granting low-interest loans to cooperative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed;
 - (b) to provide funds to support, revive and initiate cooperative sector institutions in areas that can have an immediate impact to household economy;
 - (c) to attract and facilitate investment in cooperative sector institutions that have linkages to micro, small and medium enterprises that benefit the youth;
 - (d) provide financial support to cooperative sector institutions that support strategic and high-return interventions which directly and indirectly have the potential to trigger growth and sector-wide impact;
 - (e) to attract and facilitate investment in cooperative sector institution that have linkages to low income persons, community-based organizations, and women groups; and
 - (f) provide funds to cooperative sector institutions to facilitate marketing of products and services both in the domestic and the international markets.

Guiding Principles of Operating the Fund

5. In the exercise of the powers or the performance of functions under this Act, the Member of the Executive Committee, the Committee and the Unit shall be guided by the following principles—

- (a) Public participation and financial inclusiveness;
- (b) Donor linkages and participation;
- (c) Protection of the interests the marginalized, persons with disability, women and youth; and
- (d) Local ownership and sustainability.

Revenue and expenditure of the Fund

6. (1) There shall be credited to the Fund—

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- (a) sums of money which may from time to time be voted by the County Assembly for that purpose;
 - (b) sums which represent the repayment of the capital and interest of any loan granted from the Fund;
 - (c) income from any investment made by the Fund;
 - (d) any sums of money borrowed by the Fund with the approval of the County Assembly; and;
 - (e) any gifts, donations, grants and endowments made to the Fund.
- (2) There shall be paid out of the Fund any expenditure approved by the Member of the Executive Committee and incurred in connection with the administration of the Fund.

PART III—ESTABLISHMENT AND FUNCTIONS OF THE COMMITTEE

Establishment of the Cooperative Enterprise Development Fund Committee

7. (1) There is established a Committee to be known as the Cooperative Enterprise Development Fund Committee which shall consist of—

- (a) the County Chief Officer in the County department for the time being responsible for matters relating to cooperative development or a representative appointed in writing;
 - (b) the County Chief Officer in the County department for the time being responsible for co-operative development or a representative appointed in writing;
 - (c) the Head of legal services in the county or a representative appointed in writing;
 - (d) four persons, one of whom shall be the Chairperson of the Committee, not being public officers, who shall be appointed by the Member of the Executive Committee through a competitive and transparent recruitment process; and
 - (e) the Director appointed under section 14, who shall be the secretary to the Committee.
- (2) The persons under subsection (1) (d) shall hold office for a term of five years renewable for one further term.
- (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 five 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.

Terms and conditions of service

8. The members of the Committee shall be paid such allowances, as the Member of the Executive Committee shall determine in consultation with the County Public Service Board.

Vacation of office of member

9. The office of a member of the Committee appointed under section 7 (1) (d) shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the Member of the Executive Committee;
- (f) is removed from office by the Member of the Executive Committee for—
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or (ii) failing to declare his interest in any matter being considered or to be considered by the Committee; or (iii) any other sufficient reason as may be prescribed.
- (g) dies

Functions of the Committee

10. The functions of the Committee are to—

- (a) formulate policy guidelines on cooperative sector funding;
- (b) ensure that all projects funded under this Act are consistent with the counties priorities specified in the relevant policy documents;
- (c) approve proposals submitted to it by the Unit under this Act;
- (d) authorize allocations from the Fund ;

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- (f) formulate or approve standards, guidelines and procedures for funding proposals under this Act,
- (g) approve the organizational structure of the Unit;
- (h) provide oversight in the utilization of the Fund; and
- (i) perform any other function as may be conferred on it by this Act or any other written law.

Delegation by the Committee

11. (1) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

- (2) The Committee may co-opt into the membership of a sub-committee established under sub-section (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.
- (3) The Committee may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.

Conduct of affairs of the business of the Committee.

- (1) Subject to subsection (2), the business and affairs of the Committee shall be conducted in accordance with the First Schedule.
- (2) Except as provided in the Schedule, the Committee may regulate its own procedure.

PART IV—ESTABLISHMENT OF THE FUND UNIT

Cooperative Enterprise Development Fund Unit

12. There is established, within the County department responsible for matters relating to the Cooperative sector, a unit to be known as the Cooperative Enterprise Development Fund Unit.

Composition of the unit

- 13. (1) The unit shall consist of
 - (a) a Director; and
 - (b) Such staff as the Committee may consider necessary for the performance of the functions of the unit under this Act.

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- (2) The Committee shall appoint the Director and staff of the unit through a competitively recruitment process and appointed on such terms and conditions as shall be determined by the County Public Service Board.
- (3) A person shall be qualified for appointment as the Director of the unit if such person—
 - (a) holds a degree from a university recognized in Kenya;
 - (b) has at least seven years professional experience in the relevant field.
- (4) The appointment of the Director under subsection (1) shall be by notice in the County Gazette for a term of five years and shall be eligible for re-appointment for one further term.

Vacation of office of Director

14. (1) The office of the Director shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) resigns in writing addressed to the Committee;
- (d) is removed from office by the Committee for—
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
 - (ii) failing to declare his interest in any matter being considered or to be considered by the unit or the Committee; or
 - (iii) fails to perform his or her duties in accordance with the terms and conditions of appointment.
- (e) dies.

Functions of the Unit

15. (1) The functions of the unit are to—

- (a) administer the Fund,
- (b) provide technical, financial and legal expertise to the beneficiaries of the Fund;
- (2) In the performance of its functions under subsection (1), the unit shall—

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- (a) conduct civic education to promote the awareness and understanding of the operations of the Fund amongst stakeholders;
 - (b) provide capacity building to, and advise cooperative sector institutions to ensure the effective use the funds borrowed under this Act;
 - (c) develop framework that will ensure an open, transparent and efficient use of funds borrowed under this Act;
 - (d) conduct research and gap analysis to ensure continuous performance improvement of the Fund;
 - (e) assist cooperative sector institutions, where the unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits;
 - (f) maintain a record of all Fund documentation;
 - (g) assist the Member of the Executive Committee in formulating guidelines and standard documentation required under this Act;
 - (h) carry out such other functions as may be conferred on it by the Member of the Executive Committee and this Act.
- (3) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any success fees received by it from a private party or project company as the case may be, under this Act.

PART V—ADMINISTRATION OF THE FUN

Administration of the Fund

16. (1) A Cooperative institution wishing to be considered for the grant of a loan shall make an application to the Unit in the prescribed form.

- (2) A Cooperative institution that has been awarded a loan will be issued with a Loan Identification Account Number by the Unit.
- (3) An official of a Cooperative institution who—
 - (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing relating to any matter affecting his request for a loan; or
 - (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
 - (c) is granted a loan based on false information.

shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a fine of not less than three thousand shillings or to imprisonment for a term of not less than six months and in the case of paragraph (c) to a fine of not less than thirty thousand shillings or to imprisonment for a term of not less than three years.

Conditions for grant of loan

17. (1) The Unit may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to a Cooperative institution and in so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Unit deems fit:

Provided that and subject to the provisions of this section the Unit may upon the request by an applicant to whom a loan has been granted at any time vary—

- (i) the condition subject to which the loan was made;
 - (ii) any security given in relation to the loan; or
 - (iii) any of the terms of repayment of the loan.
- (2) Where the Unit has resolved to make a loan to any eligible cooperative institution, the Unit shall notify the applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Unit may have imposed or demanded.
- (3) Where a cooperative institution fails to comply with the requirement of the Unit notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.
- (4) Where in granting a loan to a cooperative institution the Unit considers it prudent to request for a guarantor to guarantee any loan granted to the cooperative institution in case of any default by a cooperative institution in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Unit all or any loan together with interest accrued and outstanding owed to the Unit by the loanee, as shall be notified to the guarantor by the Unit.
- (5) Where a guarantor who has been notified by the Unit under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence

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and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

Annual returns

18. On the last day of each financial year the Unit shall send to all loanees an annual return form which every loanee shall be required to fill and submit to the Unit before the end of the month of August of the succeeding year.

Loan Repayment

19. A loanee shall repay the borrowed sums and interest on such terms and conditions as may be prescribed.

PART VI— MISCELLANEOUS PROVISIONS

General provisions

19. (1) If in the opinion of the Unit here has been or is likely to be any breach of or failure to comply with any condition or term of repayment respecting a loan the Unit may forthwith—

- (a) recover the loan from the cooperative institution as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the 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 Unit may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

Salaries of the Director and the Unit

20. The salary and allowances of the Director and staff of the Unit shall be paid out the Fund.

Financial reporting and audit

- (1) A cooperative institution that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Unit.
- (2) The beneficiary cooperative institution shall submit the duly audited financial accounts and any other information as may reasonably be required by the Unit within six months after the end of each financial year.

Audit of the Fund

22. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2014.

Power to make regulations

23. (1) The Member of the Executive Committee shall in consultation with the Committee make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following—

- (a) the receipt, processing and approval of applications for loans and the granting of loans to applicants;
 - (b) the preparation and maintenance of loanees' records; already granted; and
 - (c) the withdrawal, recovery and cancellation of loans
 - (d) the waiver or exemption from repayment of loans; and
 - (e) the setting-up of procedures for dealing with loan defaulters.
- (2) The regulations under this Act shall be approved by the County Executive Committee and the County Assembly before they take effect.

SCHEDULE

Section 12 (1)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings.

1. (1) The Committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the chairperson.
- (2) The Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.
- (3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Director of the unit.
- (4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.
- (5) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.
- (6) The members of a Committee shall elect a vice- chairperson from among themselves—
 - (a) at the first sitting of the Committee; and
 - (b) when ever it is necessary to fill the vacancy in the office of the vice-chairperson.
- (7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.
- (8) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

Conflict of interest

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which any matter is the subject of

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consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Quorum

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.

- (2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

Voting

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Rules of Procedure and minutes

5. The Committee shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.