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UASIN GISHU COUNTY ACTS, 2018

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*Uasin Gishu County Inua Biashara Fund***THE UASIN GISHU COUNTY INUA BIASHARA FUND ACT, 2018**

AN ACT of the County Assembly to provide for the establishment of the Inua Biashara Fund, to promote the establishment of new small businesses and industries and/or to promote the development of existing small businesses 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 Uasin Gishu County Inua Biashara Fund Act, 2018.

Interpretation

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

“appropriation” means funds approved by the County Assembly for purposes of the Fund;

“Committee” means the Committee of the Fund established under section 5;

“Constitution” means the Constitution of Kenya, 2010;

“County” means the County Government of UASIN GISHU;

“County Assembly” means the County Assembly of UASIN GISHU;

“Executive Committee Member” means the County Executive Committee member responsible for trade;

“financial year” means the period of 12 months ending on thirtieth day of June in each year;

“Fund” means the UASIN GISHU County Inua Biashara

Fund established under section 4 of this Act;

“fund manager” means any person appointed by the County Executive Committee Member under section 12;

“micro enterprise” means a firm, trade, service, industry or a business activity—

(a) whose annual turnover does not exceed five hundred thousand shillings;

(b) which employs less than ten people; and

(c) whose total assets and financial investment shall be as

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determined time to time pursuant to the provisions of the Micro and Small Enterprise Act, 2012 and includes—

- (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;
- (ii) the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings.

“small enterprise” means a firm, trade, service, industry or a business activity —

- (a) whose annual turnover ranges between five hundred and five million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investment shall be as determined from time to time pursuant to the provisions of the Micro and Small Enterprise Act, 2012, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and
 - (ii) service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five million and twenty million shillings; and

“youth” means the collectivity of all individuals in the Republic who—

- (a) have attained the age of eighteen years; but
- (b) have not attained the age of thirty-five years.

Object and Purpose of the Act

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

- (a) the establishment and administration of the Uasin Gishu County Inua Fund for;
- (b) the promotion of new small enterprises in the County especially those owned by youth, women and other special interest persons/or their groups; and
- (c) the promotion of existing small enterprises in the County especially those owned by youth groups, women groups and other special interest groups.

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*Uasin Gishu County Inua Biashara Fund***PART II — ESTABLISHMENT OF THE UASIN GISHU COUNTY
INUA BIASHARA FUND****Establishment of the Fund**

4. (1) There is established a Fund to be known as the Uasin Gishu County Inua Biashara Fund.

(2) The proceeds of the Fund shall be appropriated for purposes of—

- (a) providing access to capital and financing facilities to micro and small enterprises owned by the residents of Uasin Gishu County especially those owned by youth, women and other special interest persons/or their groups;
- (b) attracting and facilitating investment in micro and small enterprises oriented commercial infrastructure;
- (c) supporting micro and small enterprises to develop linkages with large enterprises;
- (d) facilitating marketing of products and services of micro and small enterprises owned by the residents of Uasin Gishu County in both domestic and international markets; and

(3) The Committee shall ensure access to the Fund's services in all parts of the County are equitably distributed.

**PART III — ESTABLISHMENT OF THE UASIN GISHU COUNTY
INUA BIASHARA FUND COMMITTEE****Establishment of the Committee**

5. (1) There is established a Committee to be known as the Uasin Gishu County Inua Biashara Fund Committee.

(2) The Committee shall subject to section 12 manage and administer the Fund.

Composition of the Committee

6. (1) The Committee shall consist of—

- (a) a non-executive chairperson, not being a public officer, appointed by the Governor and approved by the County Assembly.
- (b) the Chief Officer in the County department responsible for finance or their representative duly nominated in writing;
- (c) the Chief Officer in the County department for the time being responsible for youth affairs or their representative duly nominated in writing;

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- (d) the Chief Officer in the County department for the time being responsible for trade and industry or their representative duly nominated in writing;
 - (e) the Chief Officer in the County department for the time being responsible Agriculture or their representative duly nominated in writing;
 - (f) four persons from the business and agribusiness sector in the County appointed by the Executive Committee Member in charge of trade, one of whom shall be a Youth and approved by the County Assembly.
 - (g) in considering the four persons, gender, regional balance, people living with disabilities and special interest groups should be considered.
- (2) The appointment of the chairperson under sub-section (1)(a) and members under sub-section (1)(f) shall be subject to such persons—
- (a) satisfying the requirements of Chapter Six of the Constitution; and
 - (b) holding a minimum of a bachelors degree from a university recognized in Kenya; or
 - (c) on account of their training or experience—
 - (i) having over ten years distinguished experience in financial, business or economic matters; or
 - (ii) being knowledgeable about trade, industry, finance or the economy; or
 - (iii) having legal knowledge of the matters pertaining to small business; or
 - (iv) having experience in matters connected with, and of problems experienced by, small business enterprises; or
 - (v) complying with other criteria the County Executive Committee Member in charge of trade may prescribe.
- (3) The appointment of the chairperson under sub-section (1)(a) and members under sub-section (1)(f) shall be by notice in the Uasin Gishu County Gazette.

Term of Office for members of the Committee

7. (1) The chairperson and members appointed under section 6 (1)(f) shall serve a term of three years and shall be eligible for a re-appointment for one further term.

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(1) The Committee shall have not more than three (3) sittings per quarter and their allowances shall be determined by the Salaries and Remuneration Commission. The quorum for sittings shall be five (5).

Removal from Office

8. (1) A member of the Committee 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 Executive Committee Member may, upon the recommendation of the Committee terminate the appointment of a member of the Committee on any of the grounds specified under subsection (1).

Powers of the Committee

9. (1) The Committee 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 Committee shall have power to—

- (a) enter into contracts on matters connected with the Fund;
- (b) manage, control and administer the Fund in such manner and for such purposes as best promotes the purpose for which the Fund is established;
- (c) establish procedures and guidelines for matters relating to registration of Trades, loan application, loan approval and loan recovery;
- (d) co-ordinate with the fund manager or financial institutions engaged by the Committee to—
 - (i) receive and consider all loan applications from eligible persons; (ii) approve or reject such applications in accordance with the provisions of this Act; and
 - (iii) recover matured loans;
- (e) subject to the approval of the Executive Committee Member responsible for trade, invest any of the monies of

the Fund not immediately required for the purposes of this Act, as it may determine; and

- (g) exercise such other lawful powers as may be conferred by this Act or other law.

PART IV — CAPITALISATION AND ADMINISTRATION OF THE FUND

Capitalization of the Fund

10. (1) The Fund shall consist of—

- (a) monies allocated and appropriated from the County Revenue Fund by the County Assembly;
- (b) monies allocated and appropriated by county government to agriculture and enterprise related programmes as approved in the budget by the county assembly
- (d) any grants, gifts, donations, loans or other endowments given to the Fund;
- (e) such funds as may vest in or accrue to the Fund in the course of the Committee's exercise or performance of its functions under this Act; and
- (f) monies from any other lawful source accruing to the Fund.

Opening of Fund Account

11. (1) All monies received by the Fund shall be maintained in one separate bank account in a reputable Bank in the name of Uasin Gishu County Inua Biashara Fund opened and administered in accordance with the provisions of the Public Finance Management Act, 2012.

(2) The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes for which the Fund is established.

Fund Manager

12. (1) There shall be a fund manager who shall be appointed by the Committee in consultation with the County Executive Committee Member responsible for Trade pursuant with the provisions of the Public Finance Management Act, 2012.

(2) The Inua Biashara Fund Committee shall forward three names who qualify as fund manager to County Executive Committee who shall forward one name to the County Assembly for Approval.

(3) To qualify as a fund manager, the candidate should have a financial/business/ economic educational background.

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(4) The fund manager shall serve for a contract period of three (3) years.

(5) The County Executive Committee Member responsible for trade shall make regulations for the administration and management of the Fund.

Fund Expenditure

13. (1) There shall be paid from the Fund—

- (a) loans to qualifying small enterprises;
- (b) operational expenses incurred in the administration of the Fund; and
- (c) monies as are necessary for the Committee to carry out its mandate under this Act.

(2) The expenses incurred in paragraphs (b) and (c) of sub-section (1) shall not exceed five percent of the Fund's loan book from time to time.

(3) The provision of any law or regulation relating to the management of public funds shall apply to the management of the Fund.

Establishment of related agencies

14. (1) The Executive Committee Member may, on the advice of the Committee, establish—

- (a) a Uasin Gishu County Inua Biashara Agency to offer business development services to entrepreneurs at such fees as the Committee may prescribe and approved by County Assembly.
- (b) a Uasin Gishu County Empowerment Secretariat to facilitate the participation of small enterprises especially those owned by youth, women, people living with disabilities and other special interest groups in the local and international labour market and their partnership with other agencies and organizations.

(2) The Committee shall in consultation with the County Public Service Board, determine the staffing levels of the agencies that may be established under this section.

(3) An agency established under this section may perform any other function assigned to it by the County Executive Committee provided that such function furthers the objectives of this Act.

Disbursements from the Fund

15. The Committee shall lend to the small enterprises either directly or through other mechanisms as the Committee may determine.

Application for a Loan

16. (1) A small enterprise wishing to be considered for the grant of a loan shall make an application to the Committee in the prescribed form.

(2) The Committee shall grant the loans to qualifying small businesses on such terms and conditions as the Committee may prescribe including—

- (a) applicable interest rate is 5%
- (b) form and manner of disbursement;
- (c) form, manner and frequency of repayment; and
- (d) such other terms and conditions as may be prescribed by the Committee.

(3) Any un-repaid loan, including interest thereon, shall be recoverable by the Fund as a civil debt and interest rate automatically reverts to commercial rate.

Winding Up of the Fund

17. In the event of winding up of the Fund, the cash balances shall be transferred to the account designated by the County Treasury while other assets of the Fund shall be transferred to the County Government.

PART V — REPORTS AND AUDITING OF THE FUND

Annual Estimates

18. (1) At least three months before the commencement of each financial year the Committee shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year.

(2) The financial estimates referred to under sub-section (1) shall—

- (a) differentiate between recurrent and disbursement expenditure; and
- (b) itemize every activity that the Committee intends to undertake in respect of the Fund in the coming financial year under a separate vote head.

(3) Upon approval of the estimates by the County Assembly, all monies appropriated for purposes of the Fund shall be paid into the Fund account established under section 5 of this Act.

Financial statements and audits

19. (1) The Committee shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities

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and property as the Executive Committee Member 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 Auditor-General—

- (a) a financial statement of the Fund; and
- (b) such other statements of accounts as the County Executive Committee Member for Finance may approve.

Public Audit Act, No. 12 of 2003

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act.

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

(4) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Committee.

Annual Report and Publication

20. (1) The Committee shall, within a period of three months after the end of the financial year or within such longer period as the Executive Committee Member may approve in writing, submit to the Executive Committee Member in charge of finance a report of the operations of the Fund and the Committee during such year, and the yearly balance sheet and such other statements of account as the Executive Committee Member in charge of finance and trade shall require, together with the Auditor-General's report.

(2) The Committee shall, if the Executive Committee Member in charge of finance so requires, publish the report, balance sheet and statements submitted under subsection (1) in such manner as the Executive Committee Member in charge of finance may specify.

(3) The Executive Committee Member in charge of finance shall lay before the County Assembly the reports, balance sheet and statements submitted under subsection (1), and such statements of accounts as may be approved, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

PART VI – MISCELLANEOUS PROVISIONS

Offences**21. (1) An enterprise which—**

- (a) is granted a loan on the basis of false statements made in loan application whether orally or in writing relating to matter affecting a request for a loan; or
- (b) upon being granted a loan and is subsequently required answer any questions, furnish any information or particulars produce any document or paper relating to the loan amount a use thereof, neglects or fails to do so without reasonable care or furnishes false information or information aimed misleading the Committee; commits an offence and is upon conviction liable to a fine not exceeding two hundred and fifty thousand shillings.

(2) In addition to the fine in subsection (1), a director, owner promoter of a small enterprise shall be liable on conviction imprisonment for a term not exceeding 18 months.

(3) Subject to section 6 and 12, a person being entrusted with disbursement of funds and misappropriates such funds and/or unlawfully compels another person to do so is liable to conviction, fine of one Million shillings and imprisonment of three (3) years or both.

Regulations

22. (1) Subject to the provisions of the Public Finance Management Act, 2012, the Executive Committee Member may, in consultation with the Committee make Regulations for the better carrying out of provisions of this Act.