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REPUBLIC OF KENYA

# ***KENYA GAZETTE SUPPLEMENT***

**VIHIGA COUNTY ACTS, 2019**

**NAIROBI, 10th September, 2019**

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**THE VIHIGA COUNTY CO-OPERATIVE ENTERPRISE  
DEVELOPMENT FUND ACT, 2019**

**AN ACT for the County Assembly of Vihiga to make provision for establishment of an Enterprise Development Fund for the Co-operative Sector to provide low-interest loans to co-operative societies that seek to promote the welfare and economic development of the residents of the county and for connected purposes**

**ENACTED** by the County Assembly of Vihiga, as follows—

**PART I—PRELIMINARY**

**Short title**

1 This Act may be cited as the Vihiga County Co-operative Enterprise Development Fund Act, 2019 and shall come into operation upon publication in the *Kenya Gazette*

**Interpretations**

2 In this Act, unless the context otherwise requires—

“Affirmative action” includes any measure designed to overcome or ameliorate an inequity or systematic denial or infringement of a right or fundamental freedom,

“Appropriation” Means funds appropriated by the county assembly for purposes of the fund,

“Board” means a Board of management appointed as per the provisions of this Act to undertake functions as provided for in this Act,

“Constitution” means the constitution of Kenya 2010,

“Co-operative Development Enterprise Development Fund” means a Fund established under this Act to be utilized as provided for within this Act,

“Co-operative Societies” means those co-operatives registered under the Co-operative Societies’ Act Cap 490,

“County Co-operative Forum” means Congregation of representative of all co-operative societies in the County,

“County Assembly Member” means a member elected or nominated in accordance with article 177(1) of the constitution,

“County Assembly” means county assembly established under Article 176 of the constitution,

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“County Chief Officer” Means the county chief officer appointed under section 45 of the County Governments Act, 2012

“County Executive Committee Member” Means a county executive committee member appointed under Section 35 of the County Governments Act, 2012,

‘County Gazette’ means a county gazette published by the authority of the County Government or a Supplement of such Gazette,

“County Government” means the county government provided for under article 176 of the constitution,

“County Public Office” means an office in the county public service or an office in a public body but does not include any office specifically exempted by the constitution from the powers of the County Government,

“County public Officer” means any person appointed by the county government and holding or acting in any public county office whether paid, unpaid, or on contractual, or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate,

“County Public Service” means the collectivity of all individuals performing functions within any department of the county government or its agency, but does not include the governor, deputy governor, members of the county executive committee, and members of the County Assembly,

“Effective Date” means the date this Act will come into force,

‘Financial Year’ means the period of 12 months ending on the thirtieth day of the month of June,

‘Fund’ means Vihiga county co-operative development enterprise fund established under this Act,

‘Fund Administrator’ means any person appointed by the County Executive Committee Member under section 14,

“Guarantee” means any absolute or conditional promise, commitment, or undertaking by the county government or any other person to partially or completely repay or grant any loan to the county government or any other person,

‘Loan’ includes any form of borrowing, lending, or deferred payment in respect of money from a public fund which may be used or is required to be used for payment or repayment,

“Loan Security” Any attachment, guarantee or surety requested by the fund to ensure that the loan given out is fully repaid plus the accumulated interest thereof within the stipulated period of time,

“Kenya Gazzette” means an official publication of the Government of the Republic of Kenya,

“Manager” A Person appointed as per the provisions of this Act to undertake all administrative functions of Vihiga County Co-operative Enterprise Development Fund,

“Marginalized Community” means a community that, because of its relatively small population or any other reason, has been unable to fully participate in the integrated social and economic life of Vihiga County,

“Marginalized Group” means a group of people who because of laws or practices before, on, or after the effective date of this Act were or are disadvantaged by discrimination on one or more of the grounds in article 27(4) of the constitution,

“Person” means any natural or juristic person including an organ of the County Government,

“Publish” means the publication of a general notice in the *Gazette*,

“The Public” when used in relation to this Act means—

- (a) a resident of Vihiga County,
- (b) the rate payers of Vihiga County,

“Ward” means an electoral unit in a constituency delimited in accordance with Article 89 of the Constitution of Kenya 2010,

“Ward Representative” means a county assembly member representing a particular ward,

“Writing” includes printing, photography, lithography type writing, braille or any means or reproducing words in a visible form,

“Youth” means a collectivity of individuals who—

- (a) have attained the age of 18 years, but,
- (b) have not attained the age of 35 years

## **PART II—ESTABLISHMENT OF VIHIGA COUNTY CO-OPERATIVE ENTERPRISE DEVELOPMENT FUND**

### **Establishment of the Fund**

3 (1) There is hereby established a fund to be known as the Vihiga County Co-operative 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 powers to acquire, own, possess, and dispose of property and to sue and be sued in its own name

**Objects of the Fund**

4 (1) To provide funds to be used for granting low-interest loans to co-operative societies with a view to upscaling their lending activities, value addition, promote entrepreneurship and enhance productivity

(2) To provide funds to support, revive, and initiate co-operative societies in potential areas that can have positive impact to a household's economy

(3) To facilitate investment in co-operative societies that have economic linkages to micro, small and medium size enterprises that benefit the youth and women

(4) To provide financial support to co-operative societies that engage in strategic and high-return interventions which directly and indirectly have the potential to higher growth in the sector

(5) To facilitate investment in co-operative societies that have economic linkages to low-income persons, community-based organizations, youth and women groups that accept to transform into co-operative societies

(6) To provide funds to co-operative societies to facilitate marketing of products and services both in the domestic and international markets

**Establishment of the Board**

5 (1) There is established a Board to be known as "Vihiga County Co-operative Enterprise Development Fund Board "

(2) The Board shall be responsible to the County Executive Committee Member for the time being responsible for Co-operatives

**Composition of the Board**

6 The board shall consist of the following—

- (a) the Chief Officer for the time being responsible for Co-operatives who will also be the Secretary to the Board,
- (b) the Chief officer for the time being responsible for Finance,
- (c) County Commissioner of Co-operatives,
- (d) five persons elected from the Co-operative Movement during the County Co-operative Forum,

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- (e) the five persons in (d) above shall elect a chairperson from among themselves at their first meeting,
- (f) Fund Manager as an *ex-officio* member

### **Qualification and vetting to be appointed a member of the Board**

7 A person shall be qualified for appointment as a Board member under this Act if that person—

- (a) holds a diploma/post-secondary school qualification recognized in Kenya',
- (b) has at least three years professional experience in the co-operatives fields,
- (c) meets the requirements of Leadership and Integrity as provided for in Chapter 6 of the Constitution of Kenya, 2010

### **Term of Office of Board Member**

8 The chairman and members of the Board appointed under section 6 (e) shall serve for a term of three years and may be re-appointed to a single similar term

### **Vacation of Office of Board Member**

9 The Office of a Board member appointed under section 6 (d) shall become vacant if the member—

- (a) is adjudged bankrupt,
- (b) is convicted of a criminal offense and sentenced to a term of imprisonment of not less than six months,
- (c) is convicted of an offense involving fraud,
- (d) resigns in writing addressed to the Chairman of the Board,
- (e) is removed from office by the Board for,
  - (i) being unable to perform the functions of his/her office by reason of mental or physical infirmity, or
  - (ii) absent without permission (or) acceptable cause for three consecutive Board meetings,
  - (iii) failing to declare his/her interest in a matter under consideration by the Board,
- (f) in the event of death

### **Functions of the Board**

10 The functions of the Board shall be—

- (a) to formulate and implement policy guidelines of the Fund,

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- (b) to oversee the projects financed from the Fund,
- (c) to receive, analyze, and approve loan applications,
- (d) to authorize disbursement of monies from the Fund,
- (e) to design forms and other documents to be used in the administration of the Fund,
- (f) to develop the organizational structure of the Fund,
- (g) to advise the relevant county executive committee member on the administration of the Fund,
- (h) to initiate and approve standards, guidelines and procedures for funding project proposals,
- (i) to do everything that is lawful for the better and efficient management of the Fund

**Conduct of affairs and remuneration of the Board**

**11** (1) The Board shall not be salaried but entitled to allowances as per the guidelines from the Salaries and Remuneration Commission

(2) In furtherance of the provisions of Section 10, the business affairs of the Board shall be conducted in accordance with the First schedule

**PART IV—CAPITALIZATION AND ADMINISTRATION OF THE FUND**

**Sources of the Funds**

**12** There shall be paid into the Fund—

- (a) all monies appropriated by the County Assembly from the County Revenue Fund,
- (b) all monies paid in to the Fund by way of repayment of the capital paid out of the Fund,
- (c) interest from loans disbursed by the Fund,
- (d) all fees and other charges required to be paid to the Fund under this Act,
- (e) money borrowed by the Fund with approval of the County Assembly,
- (f) any gifts, donations, grants, endowments made to the Fund,
- (g) such contributions made by co-operative societies,
- (h) all other monies and dues that may lawfully become payable to the Fund

### **Bank Account for the Fund**

**13** (1) The Board shall open a bank account in consultation with the County Executive Committee Member for the time being responsible for Co-operatives and the County Executive Committee Member for the time being responsible for Finance

(2) The County Executive Committee Member for the time being responsible for Finance will determine the number and designations of the signatories of the bank account in line with the Public Finance Management Act, 2012)

### **Establishment of the Office of the Fund Administrator**

**14** (1) The County Executive Committee Member for Finance in consultation with the County Executive Committee Member for the time being responsible for Co-operatives and the County Public Service Board will competitively appoint a fund administrator to administer the fund pursuant to the provisions of the Public Finance Management Act, 2012

(2) A person shall not be appointed Fund Administrator unless he or she—

- (a) is a citizen of Kenya,
- (b) holds a first degree in the relevant field from a University recognized in Kenya,
- (c) has at least seven years post graduate working experience in the Co-operative sector,
- (d) satisfies the requirements of Chapter Six of the Constitution and other laws governing Leadership and Integrity

### **Function of the Administrator**

**15** (1) The Fund Administrator shall subject to the direction of the Board be responsible for the following duties—

- (a) to oversee the day to day administration of the Fund,
- (b) to supervise the officers of the Fund,
- (c) provide secretariat services to the Board,
- (d) to receive and list loan application for consideration by the Board,
- (e) to disburse the loans in a accordance with the approval of the Board (for direct disbursement) and preparation of schedules of beneficiaries and respective amount granted to be submitted to the financial intermediaries for disbursement and recoveries,

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- (f) to provide technical support and capacity building to the officers of the fund and the beneficiaries,
- (g) maintain financial and other records of the fund,
- (h) to prepare and submit the records of the fund on behalf of the board in accordance with the procedures as provided by this Act,
- (i) open and operate a bank account at a bank to be approved by the County Executive Member responsible for Finance,
- (j) consult with the Board on matters relating to the administration of the Fund,
- (k) prepare, sign and transmit to the auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the Country Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe,
- (l) submit the estimates of the Fund, to the Board who, after approving it, shall forward it to the County Executive Committee Member,
- (m) any other functions that may be assigned by the Board

(2) The Fund Administrator shall hold office for a term of five years and is eligible for re-appointment once

**Fund Expenditure**

**16** There shall be paid from the Fund—

- (a) loans to qualifying co-operative societies
- (b) operational expenses incurred in the administration of the Fund
- (c) monies as are necessary for the Board to carry out its mandate under this Act
- (d) the expenses incurred in paragraphs (b) and (c) of subsection 1 shall not exceed 3 % of the Funds capitalization from time to time
- (e) the provision of any law or regulations relating to the management of public funds shall apply to the management of the Fund

**Disbursements from the Fund**

**17** The Board shall lend to the co-operative societies directly or as the Board may determine

### **Application for a Loan**

**18** (1) A co-operative society wishing to be considered for the grant of a loan shall make an application to the Fund in a prescribed form

(2) The Fund shall grant loans to qualifying co-operative societies on such terms and conditions as the Board may prescribe, including—

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

(3) Any un-paid loan, including interest thereon, shall be recoverable by the Fund as a civil debt from the co-operative society in accordance with the relevant laws in Kenya

## **PART V—REPORTS AND AUDITS OF THE FUND**

### **Annual Estimates**

**19** (1) The Board shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year at least three months before the commencement of each financial year

(2) The financial estimates referred to in sub-section (1) shall itemize every activity that the Board 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 the purposes of the Fund shall be paid into the Fund account established under this Act

### **Financial Statements**

**20** (1) The Board shall cause to be kept such books of accounts and other records in relation thereto of all its undertakings, funds, activities, and property as the County Executive member responsible for co-operatives 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

(2) Financial statements of the Fund, and such other statement of accounts as the county executive committee members for Finance may approve

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### **Audit of the Fund**

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

(2) The County Treasury shall submit to the Auditor-General all books of accounts of the Fund together with all vouchers in support thereof. The Auditor-General shall be entitled to require from any member officer, employee of the Fund such information and explanation as he may deem necessary for the performance of his duties as Auditor-General

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

### **Annual Report and Publication**

22 (1) The Board shall within a period of three months after the end of the financial year, submit to the County Executive Committee Member responsible for co-operatives a report of the operations of the Fund and the Board during such year and the yearly balance sheet and such other statement of accounts as the County Executive Committee Member responsible for co-operatives shall require

(2) The Board shall, if the County Executive Committee Member responsible for co-operatives so requires, publish the report, balance sheet and statements submitted under sub-section (1) in such a manner as the relevant County Executive Committee Member may specify

(3) The County Executive Member responsible for co-operatives shall lay before the County Assembly the reports, balance sheet and statements submitted under section (1) 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**

23 (1) A co-operative society which, is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting a request for a loan (or)

(2) Upon being granted a loan and is required to answer questions, furnish any information or particulars or produce any document, or, paper relating to the loan amount and use thereof neglects or fails to do so without reasonable cause,

commits an offense and is upon conviction liable to a fine not exceeding two hundred thousand Kenyan Shillings

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(3) In addition to the fine in sub section (2), a committee member of a co-operative society employee, or agent of a co-operative society shall be liable on conviction to imprisonment for a term not exceeding 18 months

### **Regulations**

**24** Subject to the provisions of the Public Finance Management Act, 2012, the County Executive Committee Member responsible for co-operatives shall in consultation with the Board make Regulations for the better carrying out of provisions of this Act

### **Winding up of the Fund**

**25** 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 shall be transferred to the County Government

## **SCHEDULES**

### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

#### **Meetings**

1 (1) The Board shall meet at such place in the County as the chairperson may determine and the meetings shall be convened by the chairperson

(2) The Board 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. They shall not have more than twelve meetings

(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 manager 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 Board and within seven days of the request, convene an extraordinary meeting at such time and place 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 the Board shall elect a vice-chairperson from among themselves—

(a) at the first sitting of the Board, and

(b) whenever 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 Board

(8) The Board 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 Board

#### **Conflict of Interest**

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

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(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 Board

(2) Where the persons present at the Board 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 Board shall postpone the consideration of the matter in question until there is a quorum

### **Voting**

**4** A question before the Board 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 Board shall—

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