

SPECIAL ISSUE

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REPUBLIC OF KENYA

**BUSIA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

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**THE CO-OPERATIVE ENTERPRISE
DEVELOPMENT FUND ACT, 2014**

No. 2 of 2014

Date of Assent: 30th January, 2014

Date of Commencement: See Section 1

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

ENACTED by the County Assembly of Busia as follows—

1. This Act may be cited as the Co-operative Enterprise Development Fund Act, 2014 and shall come into operation on such date as the Member of the Executive Committee, with the concurrence of the Governor, may appoint. Short title

2. (1) In this Act, unless the context otherwise requires:- Interpretation

“applicant” means a co-operative sector institution operating in Busia County.

“Committee” means the Co-operative Enterprise Development Fund Committee established under section 7 of this Act;

“Governor” means the Governor of Busia 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 Co-operative Sector;

“Prescribed” means prescribed by the Member of the Executive Committee;

“Unit” means the Co-operative Enterprise Development Fund Unit established under section 13;

3. (1) There is hereby established a Fund to be known as the Co-operative Enterprise Development Fund. Establishment of Fund

(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.

4. The object and the purpose of the Fund shall be:- Objectives of the Fund

- (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, promote entrepreneurship and enhance productivity.
- (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.

5. In the exercising the powers of the performance of functions under this Act, the Board shall be guided by the objects and principles of devolved governments as set out in Articles 174 and 175 of the Constitution of Kenya, 2010 in cooperating the following principles:- Guiding Principles of Operating the Fund

- (a) Public participation and financial inclusiveness;
- (b) Development Partners linkages and participation;
- (c) Protection of the interests of the marginalized, persons with disability, women and youth; and

(d) Local ownership and sustainability.

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

Revenue and
expenditure of the
Fund

- (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.

7. (1) There is established a Committee to be known as the Co-operative Enterprise Development Fund Committee which shall consist of:-

Establishment of the
Co-operative
Enterprise
Development Fund
Committee

- (a) the County Chief Officer in the County department for the time being responsible for matters relating to co-operative development or a representative appointed in writing;
- (b) the County Chief Officer in the County department for the time being responsible for Finance and Economic Planning 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 with approval of the County Assembly;
- (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 three 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 three 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.

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.

Terms and conditions of service

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

Vacation of office of 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.

10. The functions of the Committee are to:-Functions of the
Committee

- (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 ;
- (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.

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.

Delegation by the
Committee

(2) The Committee may co-opt into the membership of a sub-committee established under subsection (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.

12. (1) Subject to subsection (2), the business and affairs of the Committee shall be conducted in accordance with the First Schedule.

Conduct of affairs of
the business of the
Committee.

(2) Except as provided in the Schedule, the Committee may regulate its own procedure.

13. 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.

Cooperative Enterprise
Development Fund
Unit

14. (1) The unit shall consist of:-

Composition of the
unit

(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.

(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 five 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.

15. (1) The office of the Director shall become vacant if the member-

Vacation of office of
Director

(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.

16. (1) The functions of the unit are to –

Functions of the Unit

(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:-

(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 of 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.

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

Administration of the Fund

(2) A Co-operative institution that has been awarded a loan will be issued with a Loan Identification Account Number by the Unit.

(3) An official of a Co-operative 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 more than six months and in the case of paragraph (c) to a fine not exceeding one million shillings or a term of imprisonment not exceeding three years.*

18. (1) The Unit may:-

Conditions for grant of loan

(a) accept or reject any application for a loan;

(b) grant a loan to a Co-operative 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) The grant of a loan by the unit shall be preceded with due compliance of the conditions by the applicant

and no loan shall be advanced or released to an applicant until the applicant shall have complied with all the conditions set by the unit.

(3) Where a cooperative institution fails to comply with the conditions set by the Unit, the application shall be rejected forthwith.

(4) Where in granting a loan to a co-operative 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. .

19. On the last day of each financial year the Unit shall send to all loanees an annual return form showing the status of the loan provided that during the subsistence of the loan, the loanee may request the Unit to provide to such a loanee a statement or other particulars pertaining to the loan and the Unit shall supply the information without undue delay. Annual returns

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

21. (1) If in the opinion of the Unit there has been or is likely to be any breach of failure to comply with any condition or term of repayment respecting a loan the Unit shall forthwith:- General provisions

(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.

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

23. (1) A co-operative 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.

Financial reporting and audit

(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

24. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2013.

Audit of the Fund

25. (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:

Power to make regulations.

- (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**

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. ^{Meetings.}

(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) 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 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.

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 ^{Conflict of interest}

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.

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

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

(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.

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. Voting

5. The Committee shall—

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

Rules of Procedure and minutes