

SPECIAL ISSUE

Kenya Gazette Supplement No. 11 (Kakamega County Acts No. 2)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KAKAMEGA COUNTY ACTS, 2018

NAIROBI, 4th September, 2018

CONTENT

Act—	PAGE
The Kakamega County Micro Finance Corporation Act, 2018	1



**THE KAKAMEGA COUNTY MICROFINANCE CORPORATION
ACT, 2018**

No. 2 of 2018

Date of Assent: 28th August, 2018

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object and Purpose.

PART II—THE MICROFINANCE CORPORATION

- 4—Establishment of the Corporation.
- 5—Functions of the Corporation.
- 6—Board of the Corporation.
- 7—Qualification of the Board Members.
- 8—Functions of the Board
- 9—Vacation of office of chairperson and board members.
- 10—Secretary of the Board.
- 11—Power to issue directions and to remove the Board.
- 12—Allowances.
- 13—Chief executive officer.
- 14—Qualification of the chief executive officer.
- 15—Removal from office of the chief executive officer.
- 16—Staff of the corporation.
- 17—Common seal.
- 18—Protection from personal liability.
- 19—Liability for damages.
- 20—Partnerships.

PART III—FINANCIAL PROVISIONS

- 21—Funds of the Corporation.
- 22—Financial year.
- 23—Annual estimates.
- 24—Accounts and audit.
- 25—Reports.

PART IV—PROVISIONS RELATING TO MICROFINANCE SERVICES

- 26—Powers of the corporation
- 27—Borrowing powers
- 28—Issuance of collateral
- 29—County government loan guarantee
- 30—Minimum liquid assets
- 31—Lending to Board members
- 32—Insider lending
- 33—Due diligence on loans
- 34—Interest rates on loans
- 35—Branches and agencies
- 36—Investment powers
- 37—Non performing loans
- 38—Writing off bad debts
- 39—Business plan
- 40—Financial sustainability
- 41—Compliance with Central Bank regulations

PART V—GENERAL PROVISIONS

- 42—Regulations.

FIRST SCHEDULE—PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

**KAKAMEGA COUNTY MICROFINANCE CORPORATION ACT,
2018**

AN ACT of the County Assembly of Kakamega County to provide for the establishment and management of a microfinance corporation to enhance access to credit and financial services to micro and medium enterprises and for connected purposes

ENACTED by the County Assembly of Kakamega County, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Microfinance Corporation Act, 2019 and shall come into force upon publication.

Interpretation

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

“board” means the Board of Directors of the Corporation;

“central bank” means the Central Bank of Kenya established under the Central Bank of Kenya Act, Cap 491;

“corporation” means the Microfinance Corporation established under section 4;

“county assembly” means the County Assembly of Kakamega;

“competent legal authority” means a court of law , Ethics and Anti Corruption Commission or the Director of Public Prosecution;

“ executive committee” means the Executive Committee of County Government of Kakamega;

“deposit” means a sum of money received or paid on terms under which it shall be repaid, with or without interest or a premium and either on demand or a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, but does not include a sum of money which is paid as—

- (a) an advance or part payment under a contract for the sale, hire or other provision of property or service where the service is repayable only if the property or service is not sold, hired or otherwise provided; or
- (b) security for performing a contract;

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

Object and purpose

3. The object and purpose of this Act is to provide for establishment of a micro finance institution providing financial services for micro and medium enterprises in order to—
- (a) promote business and investment growth within the county; and
 - (b) enhance access to credit and financial services to micro and medium enterprises;

PART II—THE MICROFINANCE CORPORATION

Establishment of Corporation

4. (1) There is established the Kakamega County Microfinance Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money or making investments;
- (c) entering into contracts; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the corporation

5. The Corporation shall—
- (a) provide microfinance banking services to micro and medium enterprises;
 - (b) undertake any business related micro finance banking; and
 - (c) carry out such other roles necessary for the better carrying out of the object and purpose of this Act.

Board of directors

6. (1) The management of the Corporation shall vest in the Board of Directors consisting of—

- (a) a non-executive chairperson appointed by the governor;
 - (b) the chief officer responsible for finance;
 - (c) the chief officer responsible for trade;
 - (d) the county attorney;
 - (e) four members appointed by the executive committee member;
and
 - (f) the chief executive officer who shall be an ex officio member.
- (2) The chairperson and members of the Board under subsection (1) shall be appointed from a list consisting of—
- (a) in the case of chairperson three names; and
 - (b) in the case of members eight names, submitted by a selection panel appointed by the Executive Committee Member in accordance with subsection (3)
- (3) The selection panel referred to in subsection (2) shall comprise, a chairperson and four other persons appointed by the Executive Committee Member as follows—
- (a) the chairperson;
 - (b) one person to represent the County Public Service Board; and
 - (b) three persons from Kakamega County appointed by the Executive Committee member with approval of the Executive Committee.
- (4) The selection panel shall have power to regulate its own procedure.
- (5) The selection panel shall advertise the vacancies and publicize the names of applicants and shortlisted candidates in at least one daily newspaper with national circulation.
- (6) In determining the nomination criteria for the chairperson and members of the Board, the selection panel shall have regard to the objectives of the development of County economic empowerment, ensuring that there are balanced competencies gender equity and regional balance.
- (7) In nominating the chairperson and members of the Board, the selection panel shall ensure that those nominated shall not have any conflict of interest in serving as chairperson or members of the Board.

(8) If the appointing authority rejects the names submitted under subsection (2) the appointing authority shall inform the selection panel and request for a replacement.

(9) In rejecting the names submitted under subsection (2), appointing authority, shall attach a memorandum giving reasons for the rejection of the Candidates

(10) The selection panel shall stand dissolved after the appointment of the members of the Board.

Qualifications of Board members

7. (1) A person shall not be qualified for appointment as chairperson unless the person—

- (a) holds a bachelor's degree or its equivalent either in economics, business, law, finance, accounting or any other related field from a recognized university.
- (b) has experience of at least ten years in senior management in public or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment as a member under sub section 6(1) (e) unless the person—

- (a) holds a degree or its equivalent in economics, business, law, finance, accounting or any other related field from a recognized university;
- (b) has experience of at least 5 years in management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) In addition, a person shall not be a chairperson or member of the Board—

- (a) unless the person is fit and proper to be in the Board of the corporation as prescribed by the Central Bank; and
- (b) the person is not a director in a bank or a microfinance bank.

(4) The term of office for the chairperson or a member appointed under section 6(1) (e) shall be three years which may be renewed for one further term.

(5) Notwithstanding the provisions of subsection (5) the Executive Committee Member shall before the appointment of the members of the

Board under section 6(1)(e) determine by lot which two of their number shall vacate office after a period of two years to ensure continuity in the activities of the Board.

(6) All appointments under this section shall be by notice in the *Gazette*.

Functions of the Board

8. The Board shall—
- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
 - (b) uphold the vision and mission of the Corporation;
 - (c) provide strategic guidance to the Corporation and ensure effective organizational planning;
 - (d) advise the management of the Corporation generally on the exercise of the powers and the performance of the functions of the Corporation;
 - (e) approve the estimates of the revenue and expenditure of the Corporation;
 - (f) ensure effective and efficient risk management;
 - (g) oversee the management performance; and
 - (h) perform such other functions as are provided for under this Act or any other written law.

Vacation of office of chairperson or board members

9. (1) Subject to the provisions of this Act the office of the chairperson or member of the Board shall become vacant if the chairperson or member of the Board—

- (a) resigns by notice in writing addressed to the appointing authority;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;

- (e) if a member is absent without the permission of the chairperson of the Board for three consecutive meetings or if chairperson is absent for three consecutive without the permission of the appointing authority;
- (f) fails to meet the requirements of chapter six of the constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period exceeding six months; or
- (h) dies.

(2) Where the office of chairperson or member of the Board becomes vacant, the appointing authority may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the provisions of subsection (2) a vacancy in the office of the Chairperson or member shall not render decisions of the Board invalid.

(4) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapter 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(5) Where a person who has vacated office under subsection (4) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of chairperson or member as the case may be.

Secretary of Board

10. The Board shall appoint a suitably qualified person under the Certified Public Secretaries of Kenya Act, Cap 534 to be the secretary of the Board.

Power to issue directions and to remove Board

11. (1) The Governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the Governor may, if at any time it appears to him or her that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of chairperson and members of the Board and dissolve the Board and shall in consultation with the Executive Committee constitute a caretaker Board for a period not exceeding six months within which a new Board shall be constituted in accordance with section 6.

Allowances

12. The chairperson and members of the Board shall be paid such allowances as the County Public Service Board shall determine in line with the Salaries and Remuneration Commission guidelines.

Chief Executive Officer

13. (1) There shall be a chief executive officer of the Agency who shall be appointed by the Governor from among three nominees recruited and recommended by the Board of Directors subject to the powers of the County Public Service Board under section 6 of the Kakamega County Public Service Board Act, who shall serve for a period of four years which may be renewed once upon satisfactory performance.

(2) The chief executive officer of the Agency shall be the accounting officer of the Agency and shall be responsible for the day to day management of the affairs of the Agency on such terms and conditions of service as the County Public Service Board shall determine in line with the guidelines of the Salaries and Remuneration Commission.

Qualifications of Chief Executive Officer

14. A person shall qualify for appointment as a chief executive officer, if the person—

- (a) is a holder of a degree in economics, business, law, finance, accounting or any other related field from a recognized university;
- (b) has a post graduate degree in a related field;
- (c) has at least five years experience in financial management; and
- (d) meets the requirements of chapter six of the Constitution of Kenya.

Removal from office of the Chief Executive Officer

15. The chief executive officer may be removed from office by the appointing authority on the recommendation of the Board if he or she—

- (a) is incapacitated by prolonged physical or mental illness;
- (b) is guilty of gross misconduct;
- (c) is incompetent or has neglected his or her duties;
- (d) has been imprisoned for a term specified in the Corporation discipline manual;
- (e) has been adjudged bankrupt or enters into a composition or scheme of arrangement for the benefit of creditors;
- (f) fails to comply with the provisions of chapter six of the Constitution;
- (g) is found culpable on any other ground that would justify removal from office under the terms and conditions of service or any other law provided such removal process shall be in compliance with Articles 47 and 50 of the Constitution.

Other staff of corporation

16. (1) Subject to powers of the County Public Service Board under section 6(3) of the Kakamega County Public Service Board Act, 2017, the Corporation may employ such other staff as it may deem necessary for the performance of its functions under this Act.

(2) The County Public Service Board shall determine the remuneration of the other employees of the Corporation in line with the Salaries and Remuneration Commission guidelines.

(3) All appointments under this section shall take into account gender equity, and regional balance.

Common Seal

17. (1) The common seal of the Corporation shall be kept in the custody of the chief executive officer or such other person as the Board may direct and shall not be used except upon the order of the Board.

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

(3) The common seal of the Corporation shall be authenticated by the signature of the chairperson of the Board and the chief executive officer.

(4) The Board shall in the absence of either the chairperson or the chief executive officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Corporation on behalf of either the chairperson or the chief executive officer.

Protection from personal liability

18. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court or tribunal, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court or tribunal holds that such act was done bona fide be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages

19. The provisions of section 18 shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Partnership

20. The Corporation may enter into partnership or collaboration with any entity for the purposes of carrying out the objectives of this Act.

PART III—FINANCIAL PROVISIONS OF THE CORPORATION

Funds of corporation

21. The Funds of the Corporation shall consist of—

- (a) monies appropriated by the County Assembly for the purposes of the Corporation;
- (b) fees, interests and charges for services rendered by the Corporation;

- (c) such monies as may be lawfully earned from income generating activities; and
- (d) grants and donation to the Corporation.

Financial year

22. The financial year of the Corporation shall be the period of twelve months ending on the thirtieth June of each year.

Annual estimates

23. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Corporation for the financial year concerned and in particular, shall provide for—

- (a) the operations of the Corporation;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Corporation;
- (d) the maintenance of the assets of the Corporation;
- (e) the funding of operations, training, research and development activities of the Corporation; and
- (f) the creation of such reserves to meet future or contingent liabilities as the Board, may deem fit.

(3) The annual estimates shall be approved by the Executive Committee Member, before the commencement of the financial year to which they relate after the Executive Committee Member has given approval, the Board shall not increase any sum provided in the estimates without the consent of the Executive Committee.

Accounts and Audit

24. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Corporation.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor General the accounts of the Corporation in respect of that year together with—

- (a) a statement of the income and expenditure of the Corporation during that year; and
- (b) a statement of the assets and liabilities of the Corporation on the last day of that financial year.

(3) The annual accounts of the Corporation shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

Reports

25. (1) The Board shall prepare quarterly reports on the operations and administration of the corporation and provide to the Executive Committee Member quarterly statements.

(2) Notwithstanding sub-section (1) the Board shall prepare monthly reports and financial statements on the operations and administration of the Corporation and submit the same to the Executive Committee Member.

(3) Within ninety days after the end of the financial year, the Board shall furnish the Executive Committee Member, with an annual financial report of the Corporation for that year.

(4) Upon receipt of the annual report under subsection (3), the Executive Committee Member shall, in line with the budget cycle, facilitate its transmission to the County Assembly.

PART IV—PROVISIONS RELATING TO MICROFINANCE SERVICES

Powers of the corporation

26. The Corporation may while carrying out its functions—

- (a) open loan recovery accounts for advanced loans;
- (b) disburse or advance monies in form of loans; and
- (c) take, receive or hold any appropriate movable or immovable asset as security or collateral for any loan advanced.

Borrowing Powers

27. Subject to the approval by the Executive Committee and the county assembly, the Corporation may borrow such monies as may be required for the purposes of carrying out its functions effectively.

Issuance of collateral

28. Subject to the approval of County Treasury, the Corporation may, while borrowing any monies issue or provide any of its assets as collateral for any loan borrowed.

County Government loan guarantee

29. The county government may guarantee any loan advanced to the Corporation subject to the approval by the county assembly.

Minimum liquid assets

30. (1) The Corporation shall maintain such minimum liquid assets as may be prescribed and in accordance with guidelines issued by the Central Bank.

(2) "Liquid assets" has the same meaning assigned under the Microfinance Act, 2006.

Lending to Board members

31. The Corporation shall not lend any money to a member of the Board unless the member is in full time employment of the Corporation.

Insider lending

32. The Corporation may lend money or grant a credit facility to its member of staff provided that such loan or credit facility does not exceed the prescribed limit.

Due diligence

33. (1) The Corporation may lend money or grant credit facility to any person provided they meet the prescribed conditions and standards.

(2) The Corporation shall not lend any money or grant any credit facility to a person or entity unless the Corporation has undertaken due diligence and established the capacity and suitability of a person to repay the loan and meet the obligations of the credit facility.

Interest rate on loans

34. The Corporation shall ensure that the interest rates chargeable on loans are affordable to the micro and medium enterprises.

Branches and agencies

35. The Corporation may establish branches or agencies within the county for the purposes of carrying out its functions.

Investment power

36. Subject to any written law governing public investments and with the approval of the County Treasury, the Corporation may invest in bonds, securities, bank deposits, trust funds, Treasury Bills or any investment venture approved by the county Treasury.

Non-performing loans

37. The corporation shall—

- (a) not lend any money or provide any credit facility to a person who is in default of fulfilling their obligations under a loan or credit facility agreement with the Corporation;
- (b) prepare a quarterly report on all non performing loans or credit facilities and submit it to the county treasury for onward transmission to the Executive Committee for direction.

Writing off bad debts

38. (1) The Corporation shall not write off a bad debt unless it demonstrates to the Executive Committee that all means of recovering the debt have been exhausted.

(2) Any write-off of a bad debt shall be subject to approval by the Executive Committee.

Business plan

39. (1) The Corporation shall prepare a five-year Business plan which shall be forwarded to the Executive Committee for approval.

- (2) The business plan shall provide for—
 - (a) analysis of business environment;
 - (b) source of funds for business;
 - (c) projected business growth;

- (d) projected profits;
- (e) capitalization;
- (f) expected return on capital or investment;
- (g) projected products;
- (h) estimated cost of the business and expenditure; and
- (i) any other matter as the Executive Committee Member may prescribe.

(3) The Corporation may review the business plan after each year in order to align it with prevailing market trends and shall be forwarded to the Executive Committee Member for onward transmission to the Executive Committee for approval by June each year.

Financial sustainability

40. The Corporation shall maintain the prescribed—

- (a) asset base to enable it realize its objectives;
- (b) liquidity ratios;
- (c) debt service plan; and

(d) any other matter that the executive committee member may from time to time prescribe.

Compliance with Central bank regulations

41. The Corporation shall comply with the guidelines issued by the Central Bank.

PART V—GENERAL PROVISIONS

Regulations

42. The Executive Committee Member may make Regulations generally for the better carrying out of the objects of this Act.

FIRST SCHEDULE (S.9 (5))**PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD**

1. The Board shall meet once in every three months.
2. The chairperson may at any time call a special meeting of the Board but such meetings shall not exceed four meetings in a financial year.
3. The chairperson shall preside at every meeting of the Board at which he or she is present, but in the absence of the chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Board shall be five members.
5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. A member who has a personal interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.
8. The Board may constitute specialised committees provided that the decisions of the committees shall be subject to the approval of the Board
9. The chief executive officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the chief executive officer's or officer's opinion, is contrary to his or her advice or contrary to law.
10. Save as provided in this schedule the Board may regulate its own procedure.

