

SPECIAL ISSUE

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THE KERICHO COUNTY ENTERPRISE FUND ACT

No. 4 of 2014

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Date of Commencement: 1st July, 2014

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**THE KERICHO COUNTY ENTERPRISE FUND
ACT, 2014**

AN ACT of County Assembly of Kericho to provide for the establishment of the County Enterprise Fund for the promotion of enterprise development of the Fund and for connected purposes

ENACTED by the County Assembly of Kericho as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kericho County Enterprise Fund Act, 2014 and shall come into operation on the date of publication in the Kenya Gazette.

Short title and commencement

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

Interpretation

“Board” means the County Enterprise Fund Board established under section 6;

“Executive Member” means the County Executive Member for trade, planning, industrialization, co-operatives development, tourism and wildlife;

“Fund” means the Kericho County Enterprise Fund established under section 4.

“micro and small enterprise” includes a trade, service, enterprise, undertaking whether registered or not whose annual turnover is less than five million shillings.

“persons with disabilities” means a person who is physically challenged, visually impaired and hearing impaired;

“youth” means men and women between the age of 18 years to 35 years.

3. The purpose of this Act is to provide for the legal framework for establishing a Fund for enterprise development in order to—

Purpose of the Act.

(a) facilitate access to credit for business capital;

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- (b) promote enterprise development among youth, persons with disabilities ,women, and men ;
- (c) facilitate the development of conducive and appropriate business environment for enterprise development;
- (d) enhance access to employment;
- (e) enhance enterprise skills development;
- (f) promote local economic growth.

PART II—THE COUNTY ENTERPRISE FUND

4. (1) There is established a Fund to be known as the Kericho County Enterprise Fund.

Establishment of the Fund.

(2) The Fund shall consist of—

- (a) such monies as may be appropriated by the County Assembly;
- (b) sums received as contributions, gifts or grants from any lawful source;
- (c) monies earned or arising from any investment of the Fund;
- (d) any money that may be payable or vested in the Fund.

(3) The Fund shall be used for supporting micro and small enterprises in—

- (a) providing affordable loans or credit for business capital to persons stipulated under section 10;
- (b) providing training and skills development related to enterprise and business development;
- (c) providing technical assistance in product and market development;

- (d) facilitating technology acquisition, adoption and utilization:

Provided that not more than five per cent of the total monies consisting of the Fund shall be utilized for administration of the Fund. The percentage may be reviewed and revised annually by the County Assembly

- (4) An amount not less than twenty five percent shall be utilized for funding activities under subsection (3) (b), (c) and (d).

- (5) The County Assembly may appropriate specific amounts to be allocated to each of the categories provided for under section 10.

- (6) The amount set aside for disbursement as loans shall be allocated equally as per Wards.

5. (1) The Fund shall be administered by the chief officer for finance and economic planning.

Administration of
the Fund

- (2) The chief officer for finance and economic planning shall—

- (a) supervise and control the administration of the Fund;
- (b) be the accounting officer of the Fund;
- (c) prepare a budget and such plans for better administration of the Fund which shall be submitted to the Board and thereafter be transmitted to the County Assembly for approval;
- (d) impose conditions or restrictions on the use of any expenditure arising from the Fund;
- (e) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (f) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with

the Public Audit Act, 2003 and in such details as the County Treasury may from time to time direct;

- (g) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
- (h) recommend to the County Public Service Board such staff as may be necessary to assist in the management of the Fund.

6. (1) There is established the Kericho County Enterprise Fund Board.

County Enterprise
Fund Board.

(2) The Board shall consist of—

- (a) The executive member who shall be the chairperson;
- (b) The chief officer for Trade, Planning, Industrialization, Co-operatives, Tourism and Wildlife who shall be the secretary;
- (c) The chief officer for Finance and Economic Planning;
- (d) The chief officer for Education, Youth Affairs Culture and Social Services;
- (e) One person representing the Youth to be appointed by the Governor who shall be sourced through a competitive process;
- (f) One person representing persons with disabilities to be appointed by the Governor who shall be sourced through a competitive process;
- (g) One person representing the Women to be appointed by the Governor who shall be sourced through a competitive process; and
- (h) One person representing the Men to be appointed by the Governor and sourced through a competitive process.

Provided that persons appointed under Section 2 (e)-(h) must be approved by the County Assembly.

(3) A person shall not be qualified for appointment as a youth, woman and man representatives of the Board unless such a person—

- (a) holds a degree in any field from a recognized university; and
- (b) meets the requirements of chapter six of the Constitution.

(4) A person shall not be qualified for appointment as a person representing persons with disabilities unless such a person—

- (a) holds at least a diploma in any field from a recognized institution; and
- (b) meets the requirements of chapter six of the Constitution.

7. (1) The Board shall be responsible for—

Functions of the Board

- (a) providing overall management and oversight of the Fund;
- (b) advising the Executive Member on the appropriate guidelines and procedures for better management of the Fund;
- (c) approving disbursements or utilization of the Fund;
- (d) preparing annual report on the implementation of the Fund for transmission to the Executive Member;
- (e) advising the Executive Member generally on implementation of this Act.

(2) The Secretary shall provide the Secretariat services to the Board.

8. (1) The conduct and regulation of the business and affairs of the Board and the Board shall be as set out in the Schedule.

Conduct of business.

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

9. The remuneration of the members of the Board shall be as determined by the County Treasury.

Remuneration.

PART III—ACCESS AND UTILIZATION OF THE FUND

10. For a person to be eligible for accessing a loan under this Act, the person must be—

Eligibility for accessing the Fund.

- (a) a youth, person with disabilities ,woman or a man;
and
- (b) operating a micro or small enterprise or intending
to start operating a business which is a micro or
small enterprise

11. (1) A person who qualifies for funding under Section 10, may apply for a loan to the Board in the prescribed form and in accordance with the prescribed conditions.

Accessing the Fund

(2) An application for a loan may be made by an individual or a group of persons subject to the prescribed conditions:

Provided that the conditions shall not be prohibitive to accessing the funds by the intended beneficiaries.

(3) The Executive Member shall, in consultation with the Board prescribe the limits of amounts that can be disbursed as a loan to an applicant.

(4) The Board may, where an applicant meets the prescribed conditions—

- (a) approve the loan application; or
- (b) reject the loan application and give reasons to the applicant.

(5) Notwithstanding subsection (2), a loan shall not be disbursed to an applicant unless the applicant has undergone through the prescribed training.

12. (1) The Board shall, in consultation with the Executive Member establish loan repayment conditions.

Loan repayment.

(2) The Board shall set the interest rates chargeable for a loan disbursed under this Act.

(3) In establishing the amount repayable by an applicant, the Board may charge a fee for insuring the loan.

13. (1) A bank account of the fund shall be opened and maintained at the commercial bank approved by the Executive Committee Member in charge of finance and economic planning.

Accounts

(2) The signature to the account fund maintained in accordance with subsection (1) shall be the Executive committee member in charge of finance and economic planning, chairperson of the board and one other person appointed by the Executive member of the finance and economic planning.

(3) The signing instructions shall be such that the signature of the secretary shall be mandatory on all payment cheques and / or instruments intended for actual release of money from the fund, plus any one of the other two.

14. (1) A loan granted under this Act shall only be used for financing an enterprise or business undertaking that was approved by the Board at the time of application for loan.

Utilization of loan.

(2) A person who utilizes a loan granted in non enterprise or business undertaking shall be disqualified from accessing the loan under this Act.

15. (1) The Board shall prepare a three year strategic plan for implementation of this Act which shall be approved by the County Executive Committee.

Strategic plan.

(2) The plan shall provide among others for—

(a) projects, strategies and activities projected to be funded under section 4 (3) (b), (c) and (d) and estimated costs;

(b) estimated number of businesses or enterprises targeted to be funded under the Act;

(c) strategies to be pursued in regard to mobilization of target group provided under section 10;

(d) any other matter that may be prescribed.

16. The Board shall not fund a project under section 4 (3) (b), (c) and (d) unless the project is provided for in the strategic plan prepared under section 15.

Funding of projects.

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17. The Board may collaborate, consult or enter into partnership with other government or private entity for the purposes of implementing this Act.

Partnership.

18. (1) The Board shall convene an annual forum for all beneficiaries and potential beneficiaries under this Act.

Annual Forum.

(2) The Forum shall provide a platform for reviewing and evaluating the funding under this Act.

19. (1) The Board shall prepare an annual report which shall be submitted to the County Assembly for consideration.

Annual report.

(2) The report shall provide among others for—

- (a) performance of the Fund against the set targets;
- (b) types of businesses or enterprises funded under this Act;
- (c) the number of beneficiaries disaggregated in accordance to gender and Ward;
- (d) the rate of repayment of loans disbursed;
- (e) challenges faced in the implementation of this Act and mitigation measures taken;
- (f) the success rate of businesses or enterprises funded under this Act; and
- (g) any other matter that may be prescribed.

20. (1) There shall be established an appellate body to be known as Review committee.

Review.

(2) The review committee shall comprise of—

- (a) County Executive member in charge of Finance and Economic Planning;
- (b) County Executive member in charge of Education, youth, and social welfare; and
- (c) County secretary.

(3) A person aggrieved by a decision of the board may request in writing to the Review committee for review of such decision.

PART IV—GENERAL PROVISIONS

21. (1) The Executive Member may, in consultation with the Board make Regulations generally for the better carrying out of the objects of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe the criteria for accessing the Fund;
- (b) prescribe the conditions imposed on accessing and repayment of the loans;
- (c) prescribe the limits of amounts that can be disbursed as loan to an applicant;
- (d) prescribe the training, skills development, technical assistance and facilitation in technology acquisition to be offered to persons applying for funding under this Act;and
- (e) prescribe the forms.

SCHEDULE (s. 8)

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

1. A member of the Board may—

Vacation of office.

- (a) at any time resign from office by notice in writing to the Governor;
- (b) be removed from office by the Governor if the person—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

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- (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (iii) is convicted of an offence involving dishonesty or fraud;
- (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
- (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board; or
- (vi) fails to comply with the provisions of this Act relating to disclosure.

2. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least four members, shall convene a special meeting of the Board at any time for the transaction of the business of the Board or Committee.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be four members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

3. (1) If a member is directly or indirectly interested in an outcome of any decision of the Board or other matter before the Board and is present at a meeting of the Board at which the matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Conflict of interest.

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the committee of trade, planning, industrialization, co-operatives development, tourism & wildlife any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding twenty thousand shillings, or both.

4. The Board shall comply with the code of conduct governing public officers.

Code of conduct.

5. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.