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The Kwale Trade Revolving Fund Act 2014

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THE KWALE COUNTY TRADE REVOLVING FUND ACT, 2014

No 2 of 2014

Date of Assent 10th September 2014
Date of Commencement By Notice

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THE KWALE COUNTY TRADE REVOLVING FUND ACT, 2014

AN ACT of the County Assembly of Kwale for the establishment, management and administration of the Kwale County Trade Revolving Fund, and for connected purposes

ENACTED by the County Assembly of Kwale, as follows—

PART I—PRELIMINARIES

Short title and Commencement date

1 This Act may be cited as the Kwale County Trade Revolving Fund Act, 2014 and shall come into operation on such a date as the Kwale County Executive Member for Industry, Trade and Investment in consultation with the County Executive Committee, shall so appoint

Interpretation

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

“Beneficiary” means natural or legal person whose application for a loan has been approved by the Board,

“Board” means a body established under Section 4 and constituted as per Section 6 of this Act,

“Constitution” means “the Constitution of Kenya, 2010”,

“County Executive Committee Member” means an individual holding an executive office in the County Government responsible for Industry, Trade and Investment matters or their equivalent, as provided for under Article 179 (2) (b) of the Constitution and Sections 35 and 36 of the County Governments Act, 2012,

“County” means the Kwale County,

“County Government” means the County Government of Kwale as constituted under the Constitution,

“County Chief Officer” means an individual in the service of the County Government responsible for Industry, Trade and Investment matters or their equivalent, appointed as per Section 45 of the County Governments Act, 2012,

“Incubation unit” means an office of the County Government charged with the responsibility of nurturing and growing businesses in the County, providing business management services to County business people and providing administrative services at the County decentralized levels with regard to the Trade Revolving Fund,

“Secretary” means a person in the service of the County Government and appointed as provided for under this Act
Objectives

3 The object and purpose of the Act is to—

(a) catalyze wealth creation,
(b) establish the Kwale County Trade Revolving Fund Board,
(c) establish the mechanisms for the provision of capital to
   (i) successful candidates engaged in employment-creating activities that contribute to value addition of raw materials,
   (ii) businesses that seek to expand their production from existing capacities,
   (iii) activities that stimulate and promote both internal and international trade

PART II—THE FUND AND THE BOARD

Establishment and Administration of the Fund

4 (1) There is hereby established the Kwale County Trade Revolving Fund

(2) The Fund shall be administered by the Kwale County Government at the County and Sub-County levels

(3) At the County level, there shall be a Fund Management Office, under the relevant Directorate as approved by the County Chief Officer, headed by the Fund Manager who will also be Secretary to the Board

(4) In the interim, the Fund Manager will be the County Trade Development Officer for a period not exceeding 6 months after the operationalization of the Fund

(5) At the Sub-County levels, there shall be incubation units managed by officers appointed by the Kwale County Public Service Board who shall discharge the administrative services of facilitating applications to the Fund, training of successful applicants on business ethics, credit management and provision of general business development and business management services *inter alia* to successful applicants and other business persons in the County

Management of the fund

5 (1) The Fund will be managed by the Kwale County Trade Revolving Fund Board

(2) In the interim, and not exceeding 6 months from the commencement date of this Act, the Fund shall be managed by a Fund Committee comprising of five members drawn from County offices of
Trade development, Enterprise Development, Social services, County Treasury and the Economic Advisor to the Governor

(3) The members of the interim Fund Committee shall elect from amongst themselves a Chairperson

(4) The officer responsible for Trade Development in the County, or their nominee, shall serve as the Fund Manager during the interim period

(5) Any three of the Interim Fund Committee Members, including the Fund Manager can transact business at any given time

(6) The Committee's main function, just like the Board, will be to approve loan applications and advise on the general performance of the fund and to undertake all acts towards the attainment of the objects of this Act

Composition of the Board

6 (1) The Board shall comprise of seven members drawn from the County Government and the members of the Public

(2) The members of the Board shall be—

(a) four of the members, two from each gender, shall be appointed from the four sub-counties by the CEC member in consultation with stakeholders with one of them designated as the Chairperson,

(b) Chief Officer in charge of County Treasury or his/her representative,

(c) Chief Officer in charge of Community development or his/her representative,

(d) Chief Officer in charge of Industry, Trade and Investment or his/her representative,

(e) the Fund Manager shall be appointed through a competitive process by the Public Service Board and approved by the County Assembly, and

(f) the Chairman of the Board shall be elected by the majority members of the Board during the first meeting of the Board

(3) The Chairman shall retain the deciding vote

(4) The Board shall make its own rules and procedures to guide its operations

(5) Quorum for Board meetings shall be five Members, including the Secretary to the Board
PART III—OPERATIONS OF THE FUND

Qualifications for applicants

7 (1) The Fund shall be available to candidates who are either individuals or legal persons duly registered as business operators within the County and shall comprise of—

(a) individual traders,
(b) businesses registered as associations,
(c) businesses registered as Cooperative societies, and
(d) businesses registered as Companies

(2) The qualifying candidates shall have an already existing business as a going concern for at least six months

(3) The Applicant shall undergo an assessment by Board to ascertain viability of the business and prior to the consideration of the application by Board

(4) Beneficiaries shall first undergo business training courtesy of the County Incubation units on business ethics before issuance of loan

(5) Loans advanced to beneficiaries shall not be used for the following unless prior consent in writing is obtained from the Board—

(a) purchase, erection, or repair of any building,
(b) purchase of any motor vehicle, and
(c) purchase of land

Borrowing limits

8 The Board shall advance loans to applicants as follows—

(a) individual business persons can borrow a minimum of KSh 30,000 and a maximum of KSh 1,500,000,

(b) legal persons (companies, cooperative societies and associations) can borrow a minimum of KSh 150,000 and a maximum of KSh 3,000,000

Collateral

9 Successful applicants shall be expected to guarantee the loans advanced to them as under

(i) For individual persons, they shall be required to provide any of the following as collateral—

(a) title deed,
(b) life insurance certificate,
(c) share certificate from Central Depository and Settlement Corporation Limited (C D S C ),
(d) Retirement Benefit Savings,
(e) any other proof of asset ownership other than of a depreciating asset

Without prejudice to the foregone, an applicant may provide collateral of a title deed or allotment letter bearing the names of a third party so long as the third party has given consent for such use in the presence of an Advocate of the High Court of Kenya

(ii) For legal persons, the collateral shall be in the form of any of the following—

(a) in the case of cooperatives, endorsement by the annual general meeting that set the borrowing limits and the assets to be attached coupled with certification by the County Co-operatives Office,
(b) in the case of associations, endorsement by the annual general meeting that authorized guarantee of loans by assets of the association,
(c) without prejudice to foregone, members of an association may be guaranteed by fellow members of the same association subject to endorsement by the executive committee of the association,
(d) for SACCO’s individual member savings for individual borrowers and the SACCO reserves for the co-operative may be used as collateral if the Board so approves

**Growth on loan**

10 Every loan shall be made on the terms that it shall attract a growth rate of between 5 to 8 per centum per annum on reducing balance as the Board may, decide in consultation with the Chief Officer, advice from time to time

**Repayment period**

11 Upon approval of loan by the Board, beneficiaries shall—

(a) enjoy a grace period of three months from date of loan disbursement before commencement of monthly repayments,
(b) pay full amount of loan with interest within 24 months after commencement of payment

**PART IV—FINANCIAL MANAGEMENT**
Sources of funds

12 The Fund shall be funded by monies from—
(a) annual allocations by Kwale County Government,
(b) grants from national government,
(c) loan repayments,
(d) other grants from development partners

The Fund Account

13 The Board shall maintain a Fund Account in a reputable commercial bank in Kenya shillings and otherwise as shall need arise

Annual Reports

14 The Board shall prepare annual reports on management of the Fund within three months after the close of the financial year for consideration by the County Executive Committee for the approval by the County Assembly

Audit

15 The accounts of the Fund shall be audited as per the Kwale County and National Government audit procedures

PART V—RESTRICTIONS ON AND RECOVERY OF LOANS

Specific purpose of the loan

16 Every loan shall be made upon such terms that the application thereof is restricted to the specific purpose to be specified by the Board

Default on repayment

17 Non-payment of loans for a period of three consecutive months constitutes a default punishable by a penalty of 10% interest on accumulated arrears

Recovery of the loan

18 More than six months default will be referred to reputable debt collector(s) by the Board for recovery at the defaulter’s cost. In addition, the default shall attract 15% interest on accumulated arrears

Diversion of loan funds

19 Beneficiaries who divert funds loaned to them to other activities that do not match with the objectives of the loan applied for shall be blacklisted from further participation in the Fund
Conflict resolution mechanisms

20 There shall be a dispute resolution body constituted by three Chief Officers in the County Government as nominated by the County Executive Committee Member and who shall not be Board Members to amicably settle conflicts arising from the administration of this Act. Upon failure of this conflict resolution mechanism, the aggrieved party may seek legal redress.

Regulations

21 The County Executive Committee Member shall make the necessary regulations to operationalize the Act upon becoming law.