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No. 11 of 2015

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THE TURKANA COUNTY BURSARY FUND ACT, 2015

AN ACT of County Assembly to provide for the establishment of the Turkana County Biashara Fund Board, and for matters incidental to and connected therewith

ENACTED by the County Assembly of Turkana as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Turkana County Biashara Fund Act, 2015.

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

"board" means the Management Board of the Fund constituted under section 8

"financial year" means the Financial year of the Fund as provided for under section 18

"fund" means the Turkana County Biashara Fund established under section 5

"member of the Board" means a person nominated under section 8

"inspector of the board" means an Officer authorized to appraise loan applications and/or facilitate repayments or recoveries

"governor" means the Governor of Turkana County

"executive committee member" means the Executive Member responsible for trade and enterprise development.

"chief officer" means the Chief Officer responsible for trade and enterprise development.

"director" means the Director responsible for trade and enterprise development.

3. The objects and purpose of this County Act are to provide for—

(a) the establishment, functions, powers and responsibilities of the Turkana County Biashara Fund Board
(b) to facilitate the improvement of business development and self-reliance by boosting the growth of micro entrepreneurs in the county.

4. In the performance of the functions and exercise of powers under this Act, the Fund shall be guided by the values and principles set out in Articles 10 and 232 of the Constitution.

PART II—ESTABLISHMENT AND FUNCTIONS OF THE TURKANA COUNTY BIASHARA FUND

5. (1) There is hereby established a Fund to be known as the Turkana County Biashara Fund, which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and/or disposing of movable and immovable property;

(c) entering into contract;

(d) borrowing and lending money;

(e) doing or performing all such other things or acts necessary for the proper performance of its functions under this bill, and which may lawfully be done or performed by a body corporate.

6. (1) provide affordable and competitive credit to both formal and informal traders involved in production and trade in goods and services within Turkana County

(2) Without prejudice to the generality of the provisions of subsection (1), the Fund shall—

(a) provide an opportunity to small scale entrepreneurs to gain commercial experience to enable them play their part in industrial and commercial development of the county

(b) provide enterprise development services;

(c) enhance the small and medium enterprises’ competitiveness as they graduate into bigger vibrant enterprises; and
(d) Perform any other lawful function for purposes of promoting enterprise and entrepreneurship development in the county.

7. (1) The headquarters of the Fund shall be in the office of the County Executive Committee Member responsible for matters relating to Trade and Enterprise Development, in Turkana County, at Lodwar Town.

8. (1) There is established a board to be known as the Turkana County Biashara Fund Management Board.

(2) The management of the Fund shall be vested in a Board established in (1) above

(3) The Board shall consist of—

(a) a Chairperson, not being public officer, appointed by the Governor on the recommendation of the Executive Member responsible for Trade and Enterprise Development with the approval of the County Assembly;

(b) the Director of gender and Social protection;

(c) the Chairperson of the Turkana County Youth Council appointed as per The Turkana Youth Council Act of 2014;

(d) The Chairperson of the Kenya National Chamber of Commerce & Industry, Turkana County,

(e) the Director of Trade & Enterprise Development, who shall be the Secretary;

(f) two persons from the business community in the County appointed by the Executive Committee Member one of whom shall be a PWD and a Woman;

(4) The appointment of the Chairperson under subsection (3) (a) and members under subsection (3)(f) shall be subject to such persons—

(a) satisfying the requirements of Chapter Six of the constitution; and

(b) on account of their training and experience—
(i) having at least five years experience in distinguished career of experience in financial, business or economic matters; or
(ii) being knowledgeable on trade and industry or enterprise development matters; or
(iii) having experience in matters connected with, and challenges experienced by, small and medium enterprises;
(iv) complying with other criteria the County Executive Committee Member may prescribe.

(5) The appointment of the chairperson under subsection (3) (a) and members under subsection (3)(f) shall be by notice in the Turkana County Gazette.

(6) The chairperson and members appointed under section 8 (3)(a) and (f) shall serve a term of three years and shall be eligible for re-appointment for one further term.

(7) The office of a member of the Board shall fall vacant—

(a) if not being an ex officio member, he/she submits his/her resignation in writing under his/her hand to the appointing authority through the Secretary;

(b) if the Board is satisfied that such a member, by reason of his/her physical or mental infirmity, is unable to execute the functions of his/her office;

(c) if he/she has been adjudged bankrupt by a competent court of law, or has committed a criminal offence which directly or otherwise reflects adversely on his/her suitability to be a member of the Board;

(d) Non-attendance of five consecutive meetings without cause; or

(e) Upon his/her death.

(8) Where the office of a member becomes vacant under subsection (7), the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.
9. (1) There shall be a Secretary to the Board, who—

(a) shall be the County Director Trade & Enterprise Development;

(b) shall be the Chief Executive of the Fund, and

(c) shall be responsible for the management of the day-to-day activities of the Fund.

(2) The Secretary shall be the one taking minutes and shall be responsible to the management Board in ensuring that the other staff members satisfactorily carry out duties and perform functions assigned to them by the Board.

(3) The Secretary of the Board shall have no right to vote at the meetings of the Board.

10. (1) The Board shall have all the powers necessary for the proper performance of its functions under this County Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Board shall have authority to —

(a) to formulate sound policies for regulating the management of the Fund;

(b) to solicit for funds and other assistance to promote the functions of the Fund;

(c) to set, in due regard to the prevailing national and county economic status, the criteria and conditions governing the granting of loans, including the rate of interest and recovery of loans;

(d) to receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements therefrom;

(e) to establish and maintain links with other persons, bodies or organizations within or outside Kenya, as the Board may consider appropriate for the furtherance of the purposes for which the Fund is established;
(f) to enter into contracts with financial institutions for the purpose of loans disbursement and recovery;

(g) to grant loans out of the Fund either with or without security, as the Board may deem fit, to any eligible person to enable him/her, or assist any trader, to meet the cost of doing business;

(h) to determine the maximum number of eligible businesses to be granted loans in any one particular year;

(i) to invest any surplus funds not currently required for the purpose of the Fund in any investment authorized by law for the investment of trust funds with power from time to time to vary or realize those investments;

(j) with the consent of the Executive Committee Member, to set up and expend such other funds as may from time to time be required;

(k) to receive and consider all loan applications from eligible persons wishing to be considered for the award of loans, and to approve, withhold or reject such requests in accordance with the provisions of this Act;

(l) to borrow such monies from such sources and in such amounts as may be approved by the Executive Committee Member with the concurrence of the Board and to secure such loans in such manner as they deem fit;

(m) to take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;

(n) to perform any other functions relating to the granting of Traders' loans in accordance with the provisions of this Act; and

(o) to perform and exercise all other functions and powers conferred on the Board by this Act

Sub-County Biashara Fund Appraisal Committee

10AA (1) There shall be a sub county appraisal committee whose membership will consist of—
(a) a chairperson elected by members of the business community in that specific sub county with at least five years experience in business matters

(b) a Sub-county Administrator or his representative in writing;

(c) a Secretary who shall be a trade officer attached to that sub county;

(d) one representative appointed by the Board from each ward constituting that specific sub county in consultation with the CEC Trade and Enterprise Development

(2) The Board shall set out criteria for nominating members to the Sub-County Appraisal Committee in Section 11(1) (d) considering gender balance and minority representation.

**Functions of Sub-County Fund Appraisal Committee**

10BB. (1) The Committee shall have authority to —

(a) receive, consider and forward all loan applications from eligible persons in the community wishing to be considered for loans and approve, withhold or reject such requests in accordance with the provisions of this act;

(b) recover debt from defaulting community members; and

(c) Perform and exercise all other functions and powers conferred on them by the Board in line with this act.

(d) Provide capacity building and training to ward level traders benefiting from the Fund.

11. (1) (a) The Chairperson shall call for and preside in all the meetings of the Board in the event of absence of the Chairperson from a particular meeting, the members present shall elect from one of themselves to preside at that particular meeting or part thereof.

(2) The Board shall meet at least four times in each year, but the Chairperson shall, upon requisition in
writing by at least five members, convene a special meeting of the Board at any time.

(3) The quorum necessary for transaction of the business of the Board shall be four members, provided that—

(a) the quorum at any requisitioned meeting shall be any number of the members of the Board entitled to attend such meeting; and

(b) the meeting shall be free to adopt any procedure thereat suitable in the circumstances.

(4) Any query, question, or a decision, and in absence of consensus, at any one meeting of the Board, shall be determined by a simple majority of the votes of the members present and voting.

(5) The Chairperson shall, in case of equality of votes, have an original and a casting vote.

(6) The Secretary shall cause minutes and proceedings of all the Board’s meetings to be entered into the Minute-Book kept for that purpose.

(7) Subject to this Act, the Board shall regulate its own proceedings.

PART III—ADMINISTRATION OF THE FUND

12. (1) There shall be credited to the Fund—

(a) at least 0.9 % of monies allocated and appropriated from the County Revenue Fund by County Assembly;

(b) sums which represent the repayment of the capital and interest of any loan granted by the Board.

(c) income from any investment made by the Board;

(d) Any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Board and incurred in connection with the administration of the Fund.

13. (1) Every Trader wishing to be considered for the grant of a loan shall make an application to the Board in the prescribed form.
(2) Every Trader who has been awarded such loan shall be issued with a Loanee Identification File Number by the Board.

(3) Any Applicant 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 prosecution, and rejection of the application.

(4) Target Clients

(a) Loans may be made to Kenyan Micro and Small Entrepreneurs who shall—

(i) Have an established business and shall have indicated through their own efforts that they have the necessary ability to operate the business with reasonable success.

(ii) Be able to satisfy the Loan Board that they keeps simple books of accounts.

(iii) Be required to give an undertaking that they shall devote their full time to the business for the purpose, for which a loan is made,

(b) An applicant must also meet the following conditions—

(i) Aged above 18 years

(ii) Kenyan citizen

(iii) Operating licensed business

(c) No second loan should be granted to an applicant until he/she has fully repaid the previous loan.
(5) Purpose for which loans may be granted

(a) Loan shall be made for specific purpose, which shall be stated in the loan application.

(b) Loans shall normally be granted for purchase of machinery, tools, and stock-in-trade

(c) Loans may be provided for value addition processes and trading purposes

(d) Short term loans for Produce Buying*.

(e) Trade in services

(6) Purpose for which Loans may not be granted

(a) The Biashara Fund Board will not deal with branded loan products.

(b) The purchase of motor vehicles.

(c) The erection of buildings.

(d) The purchase of land.

14. (1) The Board may—

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

(b) grant a loan to any such person and in so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Board deems fit:

(2) Where the Board has resolved to make a loan to any eligible applicant, the Board shall notify the applicant in writing or by phone/SMS and require him within a specified period to comply with any conditions and provide any security which the Board may have imposed or demanded.

(3) Where any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

(4) Where in granting a trader’s loan to any successful applicant and the Board considers it prudent to request for a guarantor to guarantee any loan granted to a trader, in case of any default by the loanee in the repayment of the said loan, any guarantor who has
guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.

(5) Where a guarantor who has been notified by the Board under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

(6) The loan shall be charged at such an interest rate as shall be prescribed from time to time by the Board;

(7) Repayment of loans may be made up to a maximum period of 2 years. However, in exceptional cases, the period of repayment may vary depending on the agreement between the board and the applicant, but shall not exceed two years which must be expressly in the Loan Agreement.

15. (1) A loanee shall be required, subject to and in accordance with this Act, or any other regulations made thereunder, within two years from the time of the start of his repayment, or within such other period as the Board may decide to recall its loan, whichever is the earlier—

(a) to inform the Board of his contact address;
(b) to commence repayment of his loan together with any interest accrued thereon.

16. (1) If in the opinion of the Board there has been or is likely to be any breach of or failure to comply with any condition or term of repayment in respect to a particular loan, the Board may forthwith—

(a) recover from the person to whom the loan was made or his personal representative as a civil debt under the Debts (Summary Recovery) Act (Cap. 42 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 Board may, in exercise of the powers conferred by subsection (1), engage the services of a private debt collector.

PART IV—OFFICERS OF THE BOARD

17. (1) Every inspector appointed by the Board shall for the purposes of ascertaining whether the provisions of this Act have been complied with within any premises or place liable to inspection under this section have power to enter such premises or place at all reasonable times and to examine every person whom he finds therein.

(2) Any person who—

(a) willfully delays or obstructs any inspector in the exercise of any power under this section; or

(b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section,

(c) shall be guilty of an offence:

Provided that no person shall be required under this section to answer any question or to give any information which tends to incriminate himself/herself.

(3) Every inspector shall, upon seeking admission to any premises for the purposes of inspection, produce his letter of authorization issued by the Board.

PART V—FINANCIAL PROVISIONS

18. The financial year of the Board shall be the period of twelve months commencing on the 1st of July and ending on the 30th day of June of the following year.

19. (1) The Board shall submit to the Executive Committee Member an estimate of its income and expenditure during the succeeding financial year one month before the commencement of the financial year.

(2) The Executive Committee Member shall communicate to the Fund his approval of the annual estimates at least one calendar month after the commencement of the financial year.

(3) The annual estimates shall make provisions for all the estimates of expenditure of the Fund for the financial year and shall provide for—
(a) the cost of administration of the Fund including payment of allowances, and other charges whatsoever payable to the staff and members of the Board;

(b) the payment or reimbursement to the members of the Board of monies in respect of expenses incurred during the attendance of the meetings of the Fund;

(c) The development and maintenance of any property vested in the Fund.

(4) Except with the approval of the County Executive Committee Member responsible for matters relating to Trade, no expenditure shall be incurred for the purposes of the Fund except in accordance with the annual estimates approved under subsection (2).

20. (1) The Fund shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the County Executive Committee member responsible for Trade and Enterprise Development 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 County Executive Committee responsible for Finance —

(a) a balance sheet showing in detail the assets and liabilities of the Fund

(b) such other statements of accounts as the County Executive Committee Member may approve.

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the County Executive Committee responsible for Finance in accordance with the Public Audit Act.

(3) The Fund shall submit to the County Executive Committee responsible for Finance all books and accounts of the Loans Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General (Corporations) shall be entitled to require from any member, officer, employee or agent of the Fund such information and explanation as he may consider necessary for the performance of his duties.
(4) The accounts of the Fund shall be audited by the Internal Auditor at Treasury or an auditor appointed by the Fund with the approval of the Executive Member for Finance and Economic Planning.

21. The Board shall, immediately after the end of each financial year, prepare a report on the operation of the Fund during that financial year and shall transmit such report to the Executive Committee Member who shall cause it to be presented to the County Assembly together with the report of the Auditor-General (Corporations) and certified copies of the accounts referred to in this section.

PART VI—MISCELLANEOUS PROVISIONS

22. (1) The common seal of the Fund shall be kept in the custody of the Director responsible for trade and used except upon the order of the said Director;

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

(3) The affixing of the common seal of the fund shall be authenticated by the signatures of the chairperson or the County Director of Trade and Enterprise Development;

(4) in the absence of the Chairman or the County Director of Trade and Enterprise Development, the Board shall nominate one of the members to authenticate the common seal of the fund on behalf of the County Director or the Chairman;

23. (1) All letters and instruments written or made by or on behalf of the Fund, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the County Director of Trade and Enterprise Development;

(2) In the absence of the County Director of Trade and Enterprise Development, the chairperson or a member of the Loans Board, authorized as such, may sign any letter or instrument.
24. (1) Any person having an official duty or being employed in, or in connection with, the administration of this Act shall regard and deal with all documents, information, returns and forms relating to applications for loans or to the granting of loans under this Act as secret and confidential;

(2) Any person having possession of, or control over, or access to, any documents, information, returns or forms relating to a matter referred to in subsection (1) who communicates anything contained therein—

(a) to any person other than a person to whom he is authorized by the Board to communicate it; or

(b) otherwise than for the purposes of this Act,

Shall be guilty of an offence.

25. No matter or action done by the Chairman or any member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done bona fide for the purpose of executing any provision of this Act, render the chairman, member, officer, employee or agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

26. The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interest caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially of the exercise of such powers.

27. The Executive Committee Member may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing; the Executive Committee Member may make regulations in respect of the following—

(a) the receipt, processing and approval of applications for loans and the granting of loans to Traders;

(b) the preparation and maintenance of loanees' records;

(c) the withdrawal, recovery and cancellation of loans already granted;
(d) the terms and conditions of service for the Board’s staff;
(e) the setting-up of procedures for dealing with loan defaulters.