

KILIFI COUNTY MICROFINANCE FUND (MBEGU FUND) ACT, 2016

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THE DRAFT KILIFI COUNTY MICROFINANCE FUND ACT 2016

AN ACT of Kilifi County Assembly to provide for the establishment and administration of the Kilifi County Microfinance Fund, and for matters incidental to and connected therewith

ENACTED by the County Assembly of Kilifi as follows—

PART I - PRELIMINARY

1. Short Title and Commencement

- (1) This Act may be cited as the Kilifi County Microfinance Fund Act, 2016 and it shall come into operation upon the assent by the Governor.

2. Interpretation

In this Act, unless the context otherwise requires-

“Beneficiary” means a person who is a member of a micro and small enterprise;

"Board" means the Board established under section 5;

"County" means the County Government of Kilifi;

“Enterprise” means an undertaking or a business concern whether formal or informal engaged in production of goods and provision of services;

“micro enterprise” means a firm, trade, service, industry or a business activity –

- (a) Whose annual turnover does not exceed five hundred thousand shillings; and
- (b) Which employs less than ten people.

“small enterprise” means a firm, trade, service, industry or a business activity –

- (a) Whose annual turnover ranges between five hundred and five million shillings; and
- (b) Which employs between ten and fifty people.

"Executive Member" means the County Executive Member responsible for Trade;

"Financial Year" means the period of 12 months ending on thirtieth day of June in each year;

"Fund" means the Kilifi County Microfinance fund established under section 11 of this Act;

"Fund Manager" means any person appointed by the County Executive Committee Member under section 15 of this Act;

"Mbegu fund" means the Kilifi County Microfinance Fund;

“microand small enterprise’ means a business operating on a very small scale, incorporated or a business association of a sole proprietor or partnership, informal savings and investment groups, of fewer than six employees or six members, whichever is applicable.

3. Object and Purpose of the Act

The object and purpose of the Act is to provide for the establishment and administration of the Kilifi County Microfinance Fund, for the provision of seed capital for micro and small enterprises within Kilifi, for their business development and linkages to market and in accordance with article 207 (4) (b) of the Constitution and section 116 of the Public Finance Management Act as regards establishing of Funds and administration thereof.

PART II - ESTABLISHMENT OF THE KILIFI COUNTY MICROFINANCE FUND

4. Establishment of the Fund

- 1) There is established a fund to be known as the Kilifi County Microfinance Fund also to be known as the Mbegu Fund.
- 2) The fund shall consist of -
 - (a) Monies allocated by the County Assembly from time to time for that purpose;
 - (b) Any grants, gifts, donations, loans or other endowments given to the fund;
 - (c) Such funds as may vest in or accrue to the Fund in the course of the Board's exercise or performance of its functions under this Act; and
 - (d) Monies from any other lawful source accruing to the Fund.
- 3) The proceeds of the Fund shall be appropriated for purposes of -
 - (a) providing access to capital and financial facilities to micro and small enterprises owned by the residents in the County;
 - (b) supporting micro and small enterprises to develop linkages with large enterprises;
 - (c) facilitating marketing of products and services of micro and small enterprises owned by residents in the county in both domestic and international markets;
 - (d) facilitating investment in small and micro enterprises oriented commercial infrastructure such as business or industrial parks, stalls, markets or business incubators that will be beneficial to the enterprises;
 - (e) providing business development services to micro and small enterprises, and
 - (f) generating gainful self employment for the residents of Kilifi;
- 4) The Board shall ensure access to the Fund's services in all parts of the County to the extent that it is practicable to do so.

PART III - ESTABLISHMENT OF THE KILIFI COUNTY MICROFINANCE FUND BOARD

5. Establishment of the Board

- 1) There is established a Board to be known as the Kilifi County Microfinance Fund Board.

- 2) The Board shall, subject to section 12, manage and administer the Fund.
- 3) The Board 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.

6. Composition of the Board

- 1) The Board shall consist of;
 - (a) a non-executive chairperson, not being a public officer, recruited competitively by the County Public Service Board, vetted by the County Assembly and appointed by the Governor;
 - (b) the County Chief Officer in the County department for the time being responsible for Trade and Industry or a representative duly nominated in writing;
 - (c) the County Chief Officer in the County department for the time being responsible for finance or a representative duly nominated in writing; and
 - (d) four people nominated by the Executive Committee Member and appointed by the Governor, one of whom shall be a youth representing the youth, a woman representing women, a person living with disability representing people living with disability, and one person from the Cooperative Movement.
- 2) The appointment of the chairperson under sub-section (1) (a) and members under sub-section (1) (d) shall be subject to such persons –
 - (a) satisfying the requirements of Chapter Six of the Constitution; and
 - (b) holding a minimum of a bachelors degree from a recognized institution and a minimum of a diploma in the relevant field for persons mentioned under 6 (1) (d); or
 - (c) on account of their training or experience –
 - (i) having over five years distinguished experience in financial, business or economic matters; or
 - (ii) being knowledgeable about trade, industry, finance or the economy; or
 - (iii) having experience in matters connected with, and of problems experienced by, small and micro enterprises; or
 - (iv) complying with other criteria the County Executive Committee Member may prescribe.
- 3) The above appointments shall satisfy the requirement of the Gender rule as envisaged in the Constitution.
- 4) The offices in the Board shall not attract any remuneration.

7. Term of Office of the Board

The chairperson and members of the Board appointed under section 6) (a) and 6 (d) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

8. Powers of the Board

- 1) The Board shall have all the powers necessary for the proper performance of its functions under this Act
- 2) Without prejudice to the generality of the provisions of subsection (1), the Board shall have power to-
 - (a) enter into contracts on matters connected with the Fund;
 - (b) manage, control and administer the Fund in such manner and for such purposes as best promotes the purpose for which the fund is established;
 - (c) establish procedures and guidelines for matters relating to registration of enterprises, loan applications, loan approval and loan recovery;
 - (d) co-ordinate with the fund Administrator engaged by the Board to
 - (i) receive and consider all loan applications from eligible persons
 - (ii)
 - (iii) recover matured loans
 - (e) subject to the provisions of this Act, exercise discretion in the application of the Fund;
 - (f) register small and micro enterprises for purposes of lending on such terms and conditions as the Board may determine; and
 - (g) exercise such other lawful powers as may be conferred by this Act or other law.

9. Conduct of Business and Affairs of the Board

- 1) The conduct and regulations of the business and affairs of the Board shall be provided in the regulations of this Act.
- 2) Except as provided in the regulations, the Board may regulate its own procedure.
- 3) The Board 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 Board.

10. Sub County Microfinance Fund Committees

- 1) There shall be established a Microfinance Fund Committee in every Sub County.
- 2) The Sub County Microfinance Fund Committee shall consist of;
 - a) the Sub County Administrator
 - b) the Sub County Officer in charge of Trade or a representative duly nominated in writing;
 - c) the Sub County Officer in charge of Cooperatives or a representative duly nominated in writing;
 - d) three other members in forums one of whom shall be a youth representing the youth, a woman representing women, a person living with disability representing the people living with disability. This should attain regional balance.
 - e) one person representing the business community from the Sub-County.

- 3) The Sub-County Micro Finance 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 Board.
- 4) a) the appointed members under clause 10(2) (d) and (e) shall be subject to such persons satisfying the requirements of Chapter Six of the Constitution and hold a minimum qualification of a certificate at O-level.
b) The above appointments shall satisfy the requirements of the gender rule envisaged in the constitution
- 5) The offices in the sub county micro finance committee shall not attract any remuneration.

11. Terms of the Sub County Youth Microfinance Fund Committees

The persons appointed by the Executive Committee Member under clause 10(2) (d) and (e) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

12. Powers of the Sub-County Committee

- i) to receive, to verify, to reject or to approve such applications to certain limits in accordance with the provisions of this Act and as stipulated in the regulations;
- ii) identify and profile duly registered/licensed MSEs within the Sub-County using guidelines as provided;
- iii) receive and appraise duly filled loan applications forms;
- iv) recommend disbursements of funds to the board;
- v) undertake monitoring and evaluation of the activities including field visit to beneficiaries; and
- vi) compile update and forward progress to the board on a quarterly basis

13. Delegation by the Board

The Board may, in writing generally or in any particular case, delegate to a member, an employee of the County, a committee or agent, the exercise on any of its powers or the performance of any of the functions under this Act.

14. Removal from Office

- 1) A member of the Board or the Sub County Micro Finance Fund Committee may be removed from office on any one or more of the following grounds -
 - (a) Lack of Integrity;
 - (b) Gross misconduct , whether in the performance of the members' functions or otherwise;
 - (c) Violation of the Constitution or any other law;
 - (d) Physical or mental incapacity to perform the functions of the office;
 - (e) Missing three consecutive meetings without a reasonable cause;
 - (f) Incompetence during the period in office, the appointing authority shall write to the County Assembly requesting the removal of a member from the Board and in the case of the Sub-County Committee the appointing authority shall write to the Board requesting for removal of a member in the Sub-County Committee.

15. Vacation from Office

- (1) A person shall cease to be a member of the Board if such person—
- (a) resigns in writing, to the Governor in the case of the chairperson and to the Executive Committee Member for persons under clause 6 (d) and 10 (2) (d) and (e)
 - (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
 - (c) is declared bankrupt;
 - (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
 - (e) dies.

PART IV - ADMINISTRATION OF THE FUND

16. Opening of the Fund Account

- 1) All monies received by the Fund shall be maintained in a separate bank account in the name of Kilifi County Microfinance Fund which shall be separated further into two accounts one of which will be specifically for loans and the other for operational expenses, opened and administered in accordance with the provisions of the Public Finance Management Act, 2012.
- 2) The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes for which the Fund is established.

17. Fund Manager

- 1) Pursuant to Article 116 (2) of the Public Finance Management Act, 2012, the Executive Committee Member in charge of Finance shall appoint a person responsible for administering the Fund whom shall be recruited competitively by the County Public Service Board.
- 2) The functions of the Fund Manager shall be guided by provisions of the Public Finance Management Act, 2012 relating to funds and regulations set out in this Act.
- 3) The Fund Manager shall be the Secretary to the Board.

18. Fund Expenditure

- 1) There shall be paid from the Fund -
 - (a) loans to the small and micro enterprise owners or members;
 - (b) operational expenses incurred in the administration of the Fund; and
 - (c) such other operational expenses incurred by the Board in the performance of its functions;
 - (d) monies as are necessary for the Board to carry out its mandate within the scope of this Act.
- 2) The expenses incurred in paragraph (b) and (c) of sub clause (1) shall not exceed three percent of the Funds loan book from time to time.
- 3) The provisions of any law or regulation relating to the management of public funds shall apply to the management of the Fund.

19. Disbursements from the Fund

- 1) The Board shall lend either directly or through other mechanisms as the Board may determine.
- 2) The Board may—
 - (a) if it considers it necessary, partner with any person for purposes of achieving its objectives under this Act, including partnering with the credit reference bureaus in enforcing repayment of the loans.

20. Conditions for a grant of a Loan

- 1) Beneficiaries wishing to be considered for the grant of a loan shall make an application to the Board in the prescribed form.
- 2) The Board shall grant the loans to qualifying applicants on such terms and conditions as the Board may prescribe including -
 - (a) applicable service charge;
 - (b) form and manner of disbursements;
 - (c) form, manner and frequency of repayment; and
 - (d) such other terms and conditions as may be prescribed by the Board.

PART V - REPORTS AND AUDITING OF THE FUND

21. Annual Estimates

- 1) At least three months before the commencement of each financial year the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year.
- 2) The financial estimates referred to under sub-section 1) shall -
 - (a) differentiate between recurrent and disbursement expenditure ;
and
 - (b) itemize every activity that the Board intends to undertake in respect of the Fund in the coming financial year under separate vote head.
- 3) Upon approval of the estimates by the County Assembly, all monies appropriated for purposes of the Fund shall be paid into the Fund account established under section 14 of this Act.

22. Financial Statements and Audits

- 1) The Board 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 Executive Committee Member responsible for finance 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 Auditor - General -
 - (a) a financial statement of the Fund; and
 - (b) such other statements of accounts as the County Executive Committee Member for Finance may approve.
- 2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor - General in accordance with the Public Audit Act.
- 3) The County Treasury shall submit to the Auditor - General all books and accounts of the 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 shall be entitled to require from any member, officer,

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employee or agent of such information and explanation as he may consider necessary for the performance of his duties as Auditor - General.

- 4) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Board.

23. Annual Report and Publications

- 1) The Board shall, within a period of three months after the closure of the financial year or within such longer periods as the Executive Committee Member may approve in writing, submit to the Executive Committee Member a report of the operations of the Fund and the Board during such year, and yearly balance sheet and such other statements of accounts as the Executive Committee Member shall require, together with the Auditor - General's report
- 2) The Board shall submit quarterly reports to the Executive Committee Member for onwards submission to the County Assembly.
- 3) The Board shall, if the Executive Committee Member so requires, publish the report, balance sheet and statements submitted under subsection 1) in such manner as the Executive Committee Member may specify.
- 4) The Executive Committee Member shall lay before the County Assembly the reports, balance sheet and statements submitted under subsection 1), and such statements of accounts as may be approved, within a period of fourteen days of receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

PART VI - MISCELLANEOUS PROVISIONS

22. Offences

- 1) Any person who -

(a) is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting a request for a loan; or

(b) upon being granted a loan and is subsequently required to answer any questions, furnish any information or particulars or produce any document or paper relating to the loan amount and use thereof, neglects or fails to do so without reasonable cause or furnishes false information or information aimed at misleading the Board;

commits an offence and is upon conviction liable to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding eighteen months or both.

- 2) In addition to the fine in subsection (1), a director, owner or promoter of a micro and small enterprise shall be liable on conviction to imprisonment for a term not exceeding 18 months.

23. Regulations

Subject to the provisions of the Public Finance Management Act, 2012, the Executive Committee Member may, in consultation with the Board make Regulations for the better carrying out of the provisions of this Act.