

NAKURU COOPERATIVE REVOLVING DEVELOPMENT FUND BILL, 2018

PART I

- 1 Short title
- 2 Interpretation

PART II

- 3 Establishment of fund
- 4 Objective of the fund
- 5 Guiding Principles of Operating the Fund
- 6 Revenue and Expenditure of Fund
- 7 Establishment Cooperative Revolving Development Committee
- 8 Terms and Conditions of Service
- 9 Vacation of office of member
- 10 Functions of the committee
- 11 Delegation by the Committee
- 12 Conduct of affairs of the business of the committee
- 13 Cooperative Revolving Development Fund Unit
- 14 Vacation of office of Manager
- 15 Functions of the Manager
- 16 Performance of the Functions under the fund
- 17 Administration of Fund
- 18 Condition for Grant of Loan

PART III

- 19 Annual Returns
- 20 Loan Repayment
- 21 General provisions
- 22 Salaries of the Manager and staff of the unit
- 23 Finance report and audit
- 24 Audit of the Fund
- 25 Powers to make regulations/rules

FIRST SCHEDULE

AN ACT of the County Assembly of Nakuru to establish a Cooperative Revolving Development Fund for the Co-operative Societies of Nakuru County by providing low-interest loans to Cooperative that seek to promote the welfare and economic up-liftment of the members of the Cooperatives in Nakuru County and for connected purposes.

ENACTED by the County Assembly of Nakuru as follows:-

Short Title

1. This Act may be cited as the Cooperative Revolving Development Fund Act, 2018 and shall come into operation on such date as the Member of the Executive Committee, with the concurrence of the Governor, may appoint.

Interpretation

2. (1) in this Act, unless the context otherwise requires:-

“Applicant” means a Cooperative Society institution operating in Nakuru County.

“Committee” means the Cooperative Revolving Development Fund Committee established under Section 7 of the Act.

“Governor” means the Governor of Nakuru County Government;

“loanee” means a Cooperative institution whose loan request has been approved and granted under this Act;

“Member of the Executive Committee” means the Member of the Executive Committee responsible for the Co-operative Sector;

“prescribed” means prescribed by the Member of the Executive Committee;

“Unit” means the Cooperative Revolving Development Fund Unit established under section 13;

Establish Fund

3. (1) There is hereby established a Fund to be known as the Cooperative Revolving Development Fund.

(2) The Fund 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.

Objective of the Fund

4. The object and the purpose of the Fund shall be:-

(a) to provide funds to be used for granting low-interest loans to Co-operative institutions with a view to scaling up their lending activities, value addition, promote entrepreneurship and enhance productivity.

(b) to provide funds to support, revive and initiate Cooperative societies institutions in areas that can have an immediate impact to household economy;

(c) to attract and facilitate investment in Cooperative societies institutions that have linkages to micro, small and medium enterprises that benefit the youth;

(d) provide financial support to Cooperative societies institutions that support strategic and high return interventions which directly and indirectly have the potential to trigger growth and sector wide impact;

(e) to attract and facilitate investment in Cooperative societies institutions that have linkages to low-income persons, community-based organizations, and women groups; and

(f) provide funds to Cooperative societies institutions to facilitate marketing of products and services both in the domestic and the international markets.

Guiding Principles of Operating the Fund

5. In the exercising the powers of the performance of functions under this Act, the Board shall be guided by the objects and principles of devolved governments as set out in Articles 174 and 175 of the Constitution of Kenya, 2010 in cooperating the following principles: -

(a) Public participation and financial inclusiveness;

(b) Development Partners linkages and participation;

(c) Protection of the interests of the marginalized persons with disability, women and youth; and

(d) Local ownership and sustainability.

Revenue and Expenditure of Fund

6. (1) There shall be credited to the Fund: -
- (a) Sums of money which may from time to time be voted by the County Assembly for that purpose;
 - (b) sums which represent the repayment of the capital and interest of any loan granted from the Fund;
 - (c) income from any investment made by the fund;
 - (d) any sums of money borrowed by the Fund with the approval of the County Assembly; and
 - (e) any gifts, donations, grants and endowments made to the Fund.
- (2) There shall be paid out of the Fund any expenditure approved by the Member of the Executive Committee and incurred in connection with the administration of the Fund.

Establishment Cooperative Revolving Development Committee

7. (1) There is established a committee to be known as Cooperative Revolving Development Fund Committee which shall consist of: -
- (a) the County Chief Officer in the County Department for the time being responsible for matters relating to co-operative development or a representative appointed in writing;
 - (b) the County Chief Officer in the County Department for the time being responsible for Finance and Economic Planning or a representative appointed in writing;
 - (c) the Head of legal services in the county or a representative appointed in writing;
 - (d) four persons, one of whom shall be the Chairperson for the Committee, not being public officers, who shall be appointed by the Member of the Executive Committee through a competitive and transparent recruitment process with approve of the County Assembly,
 - (e) The Manager appointed under section 14, who shall be the secretary to the committee.
- (2) The persons under subsection (1) (d) shall hold officer for a term of three years' renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1) (d) if that person:-

(a) holds a degree from a university recognized in Kenya;

(b) has at least three years professional experience in the relevant field, and;

(c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

Terms and Conditions of Service

8. The members of the committee shall be paid such allowances as the Member of the Executive Committee shall determine in consultation with the County Public Service Board.

Vacation of office of member

9. (1) The office of a member of the Committee appointed under section 7 (1) (d) shall become vacant if the member:-

(a) is adjudged bankrupt;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is convicted of an offence involving fraud or dishonesty;

(d) is absent, without reasonable cause, from three consecutive meetings of the committee;

(e) resigns in writing addressed to the Member of the Executive committee;

(f) is removed from the office by the Member of the Executive Committee for:-

(i) being unable to perform the function of his office by reason of mental or physical infirmity; or,

(ii) failing to declare his interest in any matter being considered to be considered by the committee; or,

(iii) any other sufficient reason as may be prescribed.

(g) dies

Functions of the committee

10. The functions of the Committee are to:-
- (a) formulate policy guidelines on Cooperative Societies funding;
 - (b) ensure that all projects funded under this Act are consistent with the counties priorities specified in the relevant policy documents;
 - (c) approve proposals submitted to it by the Unit under this Act;
 - (d) authorize allocations from the fund;
 - (e) formulate or approve standards, guidelines and procedures for funding proposals under this Act,
 - (f) approve the organizational structure of the Unit;
 - (g) provide oversight in the utilization of the Fund; and
 - (h) perform any other function as may be conferred on it by this Act or any other written law.

Delegation by the Committee

11. (1) The committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.
- (2) The committee may co-op into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee,
- (3) The committee may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.

Conduct of affairs of the business of the committee

12. (1) subject to subsection (2), the business and affairs of the committee shall be conducted in accordance with the First schedule.
- (2) Except as provided in the Schedule, the committee may regulate its own procedure.

Cooperative Revolving Development Fund Unit

13. There is established, within the County Department responsible for matters relating to the Cooperative Section, a unit to be known as the Cooperative Revolving Development Fund Unit.
14. (1) The unit shall consist of:-
- (a) Manager; and
 - (b) such staff as the Committee may consider necessary for the performance of the functions of the unit under this Act.
- (2) The committee shall appoint the manager and staff of the unity through a competitively recruitment process and appointed on such terms and conditions as shall be determined by the County Public Service Board.
- (3) A person shall be qualified for appointment as the manager of the unit if such person:-
- (a) holds a degree from a university recognized in Kenya;
 - (b) has at least five years professional experience in the relevant field.
- (4) The appointment of the Manager under subsection (1) shall be by notice in the County Gazette for a term of five years and shall be eligible for re-appointment for one further term.

Vacation of office of Manager

15. (1) The office of the manager shall become vacant if the member:-
- (a) is adjudged bankrupt;
 - (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
 - (c) resigns in writing addressed to the Committee;
 - (d) is removed from office by the Committee for:-
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or

(ii) failing to declare his interest in any matter being considered or to be considered by the unit or the committee; or

(iii) fails to perform his or her duties in accordance with the terms and conditions of appointment.

(e) dies

Functions

16. (1) The functions of the unit are to:

(a) administer the Fund,

(b) provide technical, financial and legal expertise to the beneficiaries of the Fund;

Performance of the Functions under the fund

(2) In the performance of its functions under subsection (1), the unit shall:-

(a) conduct civic education to promote the awareness and understanding of the operations of the Fund amongst stakeholder,

(b) provide capacity building to, and advise Cooperative societies institutions to ensure the effective use of the funds borrowed under this Act;

(c) develop framework that will ensure an open, transparent and efficient use of borrowed Fund under this Act;

(d) conduct research and gap analysis to ensure continuous performance improvement of the Fund,

(e) assist Cooperative societies institutions, where the unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities what will result in maximum benefits;

(f) maintain a record of all Fund documentation;

(g) assist the Member of the Executive Committee in formulating guidelines and standard documentation required under the Act;

(h) carry out such other functions as may be conferred on it by the member of Executive Committee and this Act.

(3) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any success fees received by it from a private party or project company as the case may be, under this Act.

Administration of Fund

17. (1) A Cooperative Society Institution wishing to be considered for the grant of a loan shall make an application to the Unit in the prescribed form.

(2) A Cooperative Society Institution that has been awarded a loan will be issued with a Loan Identification Account by the Unit.

(3) An official of a Cooperative Society 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 particular or produce any documents 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) liable to a fine of not less than three thousand shillings or to imprisonment for a term of not more than six months and in the case of paragraph (c) to a fine not exceeding once million shillings or a term of imprisonment not exceeding three years*.

Condition for Grant of Loan

18. (1) The Unit may:-

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

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

Provided that and subject to the provisions of this section the unit may upon the request by an applicant to whom a loan has been granted at any time vary:-

- (i) the condition subject to which the loan was made;
- (ii) any security given in relation to the loan, or
- (iii) any of the terms of repayment of the loan

(2) The grant of a loan by the unit shall be preceded with due compliance of the conditions by the applicant and no loan shall be advanced or released to an applicant unit the applicant shall have complied with all the conditions set by the unit.

(3) Where a Cooperative society fails to comply with the conditions set by the Unit, the application shall be rejected forthwith.

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

Annual Returns

19. On the last day of each financial year the unit shall send to all loanees an annual return form showing the status of the loan provided that during the subsistence of the loan, the loanee may request the Unit to provide to such a loanee a statement or other particulars pertaining to the loan and the Unit shall supply the information without undue delay.

Loan Repayment

20. A loanee shall repay the borrowed sums and interest on such terms and conditions as may be prescribed.

General provisions

21. (1) If in the opinion of the Unit there has been or is likely to be any breach of failure to comply with any condition or term or repayment respecting a loan the Unit shall forthwith:-
- (a) recover the loan from the Cooperative society as a civil debt under the Debts (summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount the loan or the amount thereof then remaining unpaid together with interest thereon;
 - (b) enforce or realize any security relating thereto.

(2) The Unit may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

Salaries of the Manager and staff of the unit

22. The salary and allowances of the Manager and staff of the Unit shall be paid out of the fund.

Finance report and audit

23. (1) A Cooperative society that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Unity.

(2) The beneficiary Cooperative Society shall submit duly audited financial accounts and any other information as may reasonably be required by the Unit within six months after the end of the financial year.

Audit of the Fund

24. The fund shall be audited and reported upon by the Auditor General in accordance with the provisions of the Public Audit Act 2013.

Application of Cooperative Societies, 1997 (No. 12 of 1997) and the Sacco Societies Act. 2008

25. (a) For greater certainty, the provisions of the Cooperative Societies Act, 1997 and The Cooperative Societies Act 2008, shall apply to the Cooperative Societies applying to get funding from the Nakuru County Cooperative Revolving Development Fund Act with respect to any matter, to the extent that the matter in question is not dealt with in this Act.

(b) All dispute arising out of this unit business with Cooperative Societies under this Act shall be referred to the Cooperative Tribunal.

Powers to make regulations/rules

26. (1) The Member of the Executive Committee shall in consultation with the committee make regulations/rules generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations/rules in respect of the following:-

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

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

- (c) the withdrawal, recovery and cancellation of loans,
 - (d) the waiver or exemption from repayment of loans, and
 - (e) the setting up of procedures for dealing with loan defaulters.
- (2) For the purpose of Section 26 (1) the County Executive Committee Member shall make regulations:-
- (a) prescribing measures for the conduct of the specified business
 - (b) That the regulation under this Act shall be approved by him/her.

DRAFT

Schedule

Section 12(1)

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

Meetings

- 1 (1) The committee shall meet at such place in Kenya as the Chairperson may determine and the meetings shall be convened by the chairperson
- (2) The Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.
- (3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Manager of the unit.
- (4) The chairperson may, at his discretion or at the written request made by at least half of the members of the committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.
- (5) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.
- (6) The members of a committee shall elect a vice chairperson from among themselves:-
 - (a) at the first sitting of the Committee; and
 - (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.
- (7) where the Chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the committee.
- (8) The 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 Committee.

Conflict of interest

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the committee, and is present at a meeting of the Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Quorum

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the committee.
- (2) where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

Voting

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Rules of Procedure and minutes

5. The Committee shall:-
 - (a) determine rules of procedure for the conduct of its business; and
 - (b) keep minutes of its proceedings and decisions.

Common Seal

6. (i) The common seal of the unit shall be kept in such custody as the committee may direct and shall not be used except on the order of the committee.
- (ii) The common seal of the unit shall be authenticated by the signature of the :-

- (a) manager of the unit
- (b) any other person authorized in that behalf by the committee
- (iii) The unit shall cause to be maintained, a register for making entries regarding the use of the units common seal.

DRAFT