

COUNTY GOVERNMENT OF WEST POKOT



**DEPARTMENT OF TRADE, INDUSTRIALIZATION AND COOPERATIVE
DEVELOPMENT**

WEST POKOT COUNTY COOPERATIVE DEVELOPMENT FUND ACT, 2018

THE WEST POKOT COUNTY COOPERATIVE DEVELOPMENT FUND ACT, 2018

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THE WEST POKOT COUNTY COOPERATIVE DEVELOPMENT FUND ACT, 2018

AN ACT of the County Assembly of West Pokot to provide for the establishment and administration of the Cooperative development Fund; application and processing of loans and for connected purposes;

ENACTED by the County Assembly of West Pokot, as follows —

PART I—PRELIMINARY

Short Title.

1. This Act may be cited as the West Pokot County Co-operative development Fund Act, 2018

Interpretation

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

“**County**” means the West Pokot County;

“**chief Officer**” means the chief officer responsible for matters related to Co-operative affairs in the county;

“**board**” means the Fund Management Board constituted under section 8;

“**Financial year**” means the financial year of the Fund as provided for under section 22;

“**Fund**” means the West Pokot County Co-operative Fund Act established under section 4;

“**Member of the Board**” means a person or group of persons nominated under section 8;

“**Executive Committee Member**” means the County Executive Member responsible for matters related to trade and Co-operative affairs in the county;

“**Loanee**” means any person or group of persons or cooperatives granted a trade loan under the West Pokot County Cooperative Development Fund Act by the department in charge of Trade and Co-operatives in the County.

“**Successful applicant or group of applicants**” means any person or group of persons, who being a Kenyan citizen, has attained minimum entry requirements for the advancement of the loan

Object of the Act

3. The object of this Act is to provide for affordable and competitive credit to co-operatives involved in small scale production.

PART II—ESTABLISHMENT AND FUNCTIONS OF THE WEST POKOT COUNTY CO-OPERATIVE DEVELOPMENT FUND

Establishment of the Fund

4. There is hereby established a Fund to be known as the West Pokot County Co-operative development Fund, which shall be a body corporate with perpetual succession and a common seal.

Functions of the Fund

5. (1) The functions of the Fund shall be to provide affordable and competitive credit to successful applicants.

(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.

(3) A loan granted under this Fund shall carry an interest rate of 3% per annum at a reducing balance.

Guiding Principles of the Fund

6. In the exercise of the powers or the performance of the functions under this Act, the Executive Committee Member and the Board shall be guided by the following principles-

- (a) public participation and financial inclusiveness;
- (b) donor linkages and participation;
- (c) protection of the interests of the marginalized, persons with disability, women and the youths; and local ownership and sustainability.

The Fund Official Headquarters

7. (1) The headquarters of the Fund shall be in the office of the Executive Committee Member responsible for matters relating to Trade in West Pokot County.

(2) Subject to subsection (1) above, the Executive Committee Member may, as may be deemed appropriate, direct where the official headquarters of the fund shall be, other than this office.

Establishment of the Board

8. (1) There is established the West Pokot County Cooperative Development Fund Management Board.

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

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(3) The Board shall consist of—

- (a) a person appointed by the County Executive Committee Member for Finance, in accordance with sections 116 and 148 of the Public Finance Management Act, who shall be the secretary of the board;
- (b) a representative from the Office of the County Attorney;
- (c) two representatives from the County Department dealing with matters relating to youth, gender and social services.
- (d) one person representing county chamber of commerce;
- (e) County Executive Committee Member responsible for matters relating to Cooperatives;
- (f) one person representing the County Executive Committee Member for Finance and Economic Planning; and
- (g) one person representing Co-operative Societies.

(4) The members of the Board referred to in paragraphs 8(3)(a) to (f) shall be appointed by the Executive Committee Member with approval of the County assembly.

(5) The members of the Board, other than the secretary and the County Executive Committee shall hold office for a period of three years and may be eligible for re-appointment only once.

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

- (a) if not being an ex officio member, submits a resignation in writing to the appointing authority through the Secretary;
- (b) if the Board is satisfied that such a member, by reason of physical or mental infirmity, is unable to execute the functions of the office;
- (c) if the member 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 written cause; or
- (e) upon death.

(7) Where the office of a member becomes vacant under subsection (6), the Secretary shall forthwith notify the appointing authority of the vacancy for appropriate action.

The Chairperson of the Board

9. The chairperson of the Board shall be elected by the members and shall-
- (a) chair the committee meetings;
 - (b) preside over all Board meetings;
 - (c) monitor the activities of the beneficiaries.

Secretary to the Board

10. (1) There shall be a Secretary to the Board, who shall be-
- (a) the Administrator of the Fund;
 - (b) appointed by the Executive Committee Member for Finance from among the staff in the department of Trade, Industry, Co-operatives and investment;
 - (c) responsible for the supervision of the management of the day-to-day activities of the Fund.
- (2) The Secretary shall be the one taking minutes.
- (3) The Secretary of the Board shall have no right to vote at the meetings of the Board.

Functions and Powers of the Board

11. (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 authority to –
- (a) solicit for funds and other assistance to promote the functions of the Fund;
 - (b) 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;
 - (c) receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements therefrom;
 - (d) establish and maintain links with other persons or group of 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;
 - (e) grant loans out of the Fund , to any eligible person or group of persons to enable them, or assist any trader, to expand their businesses;
 - (f) invest any surplus funds not immediately required for the purpose of the Fund in any investment authorized by law;
 - (g) receive and consider all loan applications from eligible persons or group of 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;
 - (h) take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;
 - (i) perform any other functions relating to the granting of to successful applicant loans in accordance with the provisions of this Act; and
 - (j) perform and exercise all other functions and powers conferred on the Board by this Act.

Meetings of the Board

- 12.(1) The Chairperson shall call for and preside in all the meetings of the Board.

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(2) 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.

(3) The Board shall meet at least two 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.

(4) 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 vote at such meeting; and
- (b) the meeting shall be free to adopt any procedure thereat suitable in the circumstances.

(5) 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.

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

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

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

PART III – ADMINISTRATION OF THE FUND

Revenue and Expenditure of the Fund

13. The Fund shall consist of -

- (a) moneys allocated and appropriated to the scheme from the County Revenue Fund by the County Assembly from time to time for the first three years after the commencement of this Act;
- (b) sums from the repayment of the capital and interest of any loan granted from the Fund;
- (c) income from any investment made by the Fund;
- (d) money borrowed by the Fund with the approval of the Executive Committee Member and the County Assembly;
- (e) any grants, gifts, donations or other endowments given to the Fund;
- (f) moneys that may vest in or accrue to the Fund in the course of the exercise or performance of the functions of the Committee under this Act; and
- (g) moneys from any other lawful source accruing to the Fund.

Bank account

14.(1). The Board shall open a bank account of the Fund and such other accounts in commercial banks with the approval of the County Executive Committee Member for Finance.

(2). The signatories to the bank accounts maintained under subsection (1) shall be the officer administering the fund who is the secretary to the Board, the Chief Officer responsible for Co-operatives and two other persons appointed by the Board with the approval of the Executive Committee Member.

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(3). The signing instructions shall be such that the signature of the Secretary to the Board shall be mandatory on all payment cheques or other instrument intended for actual release of money from the Fund, in addition to any two of the other three signatories.

15.The Board may engage the services of a competitively sourced bank or financial intermediary for the better management of the Fund and the bank or financial intermediary so designated shall be subject to the terms and conditions of any agreement for that purpose between the County Government of West Pokot and the Bank or financial intermediary.

Loan Application

16.(1) A person, registered group or a co-operative society wishing to be considered for the grant of a loan shall make an application to the Board.

(2) The secretary on receipt of the forms shall scrutinize it to ensure that all required documents are attached and the application is proper in all respects.

(3) A person, group of applicants or Cooperative Society that has been awarded such loan shall be issued with loanee identification file number by the Board.

(4) Properly filled application forms are registered in new application register pending vetting.

(5) Any person or group of applicants or 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 the 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.

Loan Appraisal

17. (1)The applicants shall be vetted by the County Trade Development Office.

(2) The County Trade Development Officer shall-

(a) complete a questionnaire to verify information contained in application form as well as technical data;and

(b) sign all forms before handing them over to the appraising officer who is the secretary to the board;

(3)The Secretary to the Board after perusing the application forms shall complete and sign them.

(4) The guiding factors during the appraisals shall include-

(a) the purpose for which the loan is required ;

(b) ability of the business to generate enough funds to repay the loan;

(c) credibility of the applicant;

(d) if the business is dully registered;

(e) the group agreement to guarantee the application;

(f) availability of adequate security or collaterals

(5) The loan applications shall be deliberated upon and considered for approval during a board meeting.

(6) The department shall ensure full participation of all wards in the application and award processes.

Consideration of the Loan Applications.

18.(1)The Board may—

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- (a) accept or reject any application for a loan;
- (b) grant a loan to any such person or group of persons 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 or group of applicants, the Board shall notify the applicant or group of applicants in writing and by phone and require them 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 or group of applicants fails to comply with the requirement of the Board notified under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

(4) (a) where in granting a trader's loan to any successful applicant or group of applicants and the Board considers it prudent to request for a guarantor to guarantee any loan granted to a trader, the loanee shall still bear the responsibility for the entire amount and interest thereon.

(b) 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 loanee and a guarantor who has been notified by the Board under subsection (4) (a) and (b) fails or refuses to repay such loan together with any interest accrued thereon, the loanee and guarantor shall be guilty of an offence in accordance with the provisions of this Act and if sanctioned shall be liable to a fine not exceeding two times the amount in default.

Obligations of the loanee

19. (1) A loanee shall be required, subject to and in accordance with this Act, or any other regulations made thereunder to-

- (a) inform the Board the current contact details;
- (b) commence repayment of the loan together with any interest accrued thereon as indicated in the loan agreement signed between the loanee and the Board;
- (c) provide any security or guarantee as may be provided for under this Act or regulations.

Loan Monitoring and Tracking

20. The Secretary shall maintain an efficient and effective loan monitoring and tracking system that shall include-

- (a) maintaining disbursement schedule and loans register;
- (b) preparing a loan field report form;
- (c) preparing itinerary of visits to clients;
- (d) carrying out regular visits and assessment of clients loan performance.

Non Compliance of Loan Repayment

21. (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 or group of persons to whom the loan was made or the 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; and

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- (b) enforce or realize any security relating thereto.
- (2) A loan shall be considered to be in default when the borrower is sixty days late in repayment of the loan and all efforts have been made to make the borrower pay but it has failed.
- (3) The Board may, in exercise of the powers conferred by subsection (1), engage the services of a private debt collector.

PART V – FINANCIAL PROVISIONS

Financial year of the Fund

22. The financial year of the Fund 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.

Annual estimates

23.(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 Board the 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; and
- (c) the development and maintenance of any property vested in the Fund.

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

Annual Accounts, Audit and Report

24. (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, Industry and cooperatives 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 Executive Committee Member may approve.

(2) The Fund shall submit to the County Executive Committee Member responsible for Finance 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.

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(3) The accounts of the Fund shall be examined, audited and reported upon annually by the County Executive Committee Member responsible for Finance in accordance with the Public Audit Act, and shall cause it to be presented to the County Assembly.

PART VI – MISCELLANEOUS PROVISIONS

Common Seal of the Fund

25. (1) the common seal of the Fund shall be kept in the custody of the Executive Committee Member responsible for trade and may only be used upon the order of Executive Committee Member.

(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 shall be authenticated by the signatures of the Chairperson or the secretary.

(4) In the absence of the Chairperson or the secretary the Executive Committee Member shall nominate a member of the Board to authenticate the common seal of the Fund on behalf of either the Chairperson or the secretary.

Signing on behalf of the Board

26. (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 Chairperson or the Secretary to the Fund.

(2) In the absence of the Chairperson or the Secretary to the Fund, a member of the Board, authorized as such, may sign any letter or instrument.

Secrecy, offences and penalties

27.(1) Any person or group of persons 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 or group of persons 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 contrary or prejudicial to the information contained therein—

(a) to any person or group of persons other than a person or group of persons authorized by the Board to communicate to; or

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

shall be guilty of an offence and liable and if convicted shall be liable to fine not exceeding one hundred thousand shillings only or to a term of imprisonment not exceeding one year or to both.

Protection from personal liability

28. No matter or thing done by the Chairperson 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 chairmperson, member, officer, employee or agent or any person or group of persons acting on their directions, personally liable to any action, claim or demand whatsoever.

Liability of the Board for damages

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29. The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person or group of persons for any injury to them, their property or any of their 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.

Regulations

30. The Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act 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 staff;
- (e) the setting-up of procedures for dealing with loan defaulters.
- (f) any other regulation that may be deemed necessary for the management of the fund

Hon. Thomas Ngolesia
Leader of Majority