

KIAMBU COUNTY YOUTH ENTERPRISE DEVELOPMENT FUND BILL, 2013

ARRANGEMENT OF CLAUSES

Section

PART I – PRELIMINARY

- 1 Short Title
- 2 Interpretation
- 3 Object and Purpose of the Act

PART II – ESTABLISHMENT OF THE KIAMBU COUNTY YOUTH ENTERPRISE DEVELOPMENT FUND

- 4 Establishment of the Fund

PART III – ESTABLISHMENT OF THE BOARD

- 5 Establishment of the Board
- 6 Composition of the Board
- 7 Term of Office for Members of the Board
- 8 Removal from Office
- 9 Powers of the Board

PART IV – CAPITALISATION AND ADMINISTRATION OF THE FUND

- 10 Capitalisation of the Fund
- 11 Opening of Fund Account
- 12 Fund Manager
- 13 Fund Expenditure
- 14 Establishment of Related Agencies
- 15 Disbursements from the Fund
- 16 Application for a Loan

17 Winding Up of the Fund

PART V – REPORTS AND AUDITING OF THE FUND

18 Annual Estimates

19 Financial Statements and Audits

20 Annual Report and Publication

PART VI – MISCELLANEOUS PROVISIONS

21 Offences

22 Regulations

KIAMBU COUNTY YOUTH ENTERPRISE DEVELOPMENT FUND BILL, 2013

An Act of the County Assembly to provide for the establishment of the Youth Enterprise Development Fund, to promote the establishment of new small businesses and industries by the youth, to promote the development of existing small businesses and for connected purposes

ENACTED by the County Assembly of Kiambu as follows-

PART I – PRELIMINARY

Short title **1.** This Act may be cited as the Kiambu County Youth Enterprise Development Fund Act, 2013.

Interpretation **2.** In this Act, unless the context otherwise requires-

“appropriation” means funds appropriated by the County Assembly for purposes of the Fund;

“Board” means the Board of the Fund established under section 5;

“Constitution” means the Constitution of Kenya, 2010;

“County” means the County Government of Kiambu;

“County Assembly” means the County Assembly of Kiambu;

“Executive Committee Member” means the County Executive Committee member responsible for youth affairs;

“financial year” means the period of 12 months ending on thirtieth day of June in each year;

“Fund” means the Kiambu County Youth Enterprise Development Fund established under section 4 of this Act;

“fund manager” means any person appointed by the County Executive Committee Member under section 12;

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

business activity –

(a) whose annual turnover does not exceed five hundred thousand shillings;

(b) which employs less than ten people; and

(c) whose total assets and financial investment shall be as determined time to time pursuant to the provisions of the Micro and Small Enterprise Act, 2012 and includes -

(i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;

(ii) the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings.

“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; and

(c) whose total assets and financial investment shall be as determined from time to time pursuant to the provisions of the Micro and Small Enterprise Act, 2012,

and includes—

(i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and

(ii) service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five million and twenty million shillings; and

“youth” means the collectivity of all individuals in the Republic who

—
(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.

Object and purpose of the Act

3. The object and purpose of the Act is to provide for –

(a) the establishment and administration of the Kiambu County Youth Enterprise Development Fund;

(b) the promotion of new small enterprises by the youth in the County;
and

(c) the promotion of existing small enterprises in the County.

PART II – ESTABLISHMENT OF THE KIAMBU COUNTY YOUTH ENTERPRISE FUND

Establishment
of the Fund

4. (1) There is established a Fund to be known as the Kiambu County Youth Enterprise Development Fund.

(2) The proceeds of the Fund shall appropriated for purposes of -

(a) providing access to capital and financing facilities to micro and small enterprises owned by the youth resident in the County;

(b) attracting and facilitating investment in micro and small enterprises oriented commercial infrastructure;

(c) supporting youth oriented micro and small enterprises to develop linkages with large enterprises;

(d) facilitating marketing of products and services of micro and small enterprises owned by youth resident in the County in both domestic and international markets; and

(e) facilitating employment of youth resident in the County in the international labour market.

(3) 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 KIAMBU COUNTY YOUTH ENTERPRISE DEVELOPMENT FUND BOARD

Establishment
of the Board

5. (1) There is established a Board to be known as the Kiambu County Youth Enterprise Development Fund Board.

(2) The Board shall subject to section 12 manage and administer the Fund.

Composition of
the Board

6. (1) The Board shall consist of –

(a) a non-executive chairperson, not being a public officer, appointed by

- the Governor;
- (b) the Chief Officer in the County department for the time being responsible for finance or their representative duly nominated by in writing;
 - (c) the Chief Officer in the County department for the time being responsible for youth affairs or their representative duly nominated in writing;
 - (d) the Chief Officer in the County department for the time being responsible for trade and industry or their representative duly nominated in writing;
 - (e) the County legal advisor who shall be the secretary; and
 - (f) two persons from the business community in the County nominated by the Executive Committee Member and appointed by the Governor, one of whom shall be a youth.
- (2) The appointment of the chairperson under sub-section (1)(a) and members under sub-section (1)(f) 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 university recognized in Kenya; or
 - (c) on account of their training or experience –
 - (i) having over ten years distinguished experience in financial, business or economic matters; or
 - (ii) being knowledgeable about trade, industry, finance or the economy; or
 - (iii) having legal knowledge of the matters pertaining to small business; or
 - (iv) having experience in matters connected with, and of problems experienced by, small business enterprises; or
 - (v) complying with other criteria the County Executive Committee Member may prescribe.

(3) The appointment of the chairperson under sub-section (1)(a) and members under sub-section (1)(f) shall be by notice in the Kiambu County Gazette.

Term of Office for members of the Board 7. The chairperson and members appointed under section 6 (1)(f) shall serve a term of three years and shall be eligible for a re-appointment for one further term.

Removal from Office 8. (1) A member of the Board may be removed from office only for –

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office; or
- (d) incompetence or neglect of duty.

(2) The Executive Committee Member may, upon the recommendation of the Board terminate the appointment of a member of the Board on any of the grounds specified under sub-section (1).

Powers of the Board 9. (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 youth enterprises, loan application, loan approval and loan recovery;
- (d) co-ordinate with the fund manager or financial institutions engaged by the Board to-
 - (i) receive and consider all loan applications from eligible persons;
 - (ii) approve or reject such applications in accordance with the

provisions of this Act; and

(iii) recover matured loans;

(e) subject to the approval of the Executive Committee Member responsible for finance, invest any of the monies of the Fund not immediately required for the purposes of this Act, as it may determine; and

(g) exercise such other lawful powers as may be conferred by this Act or other law.

PART IV - CAPITALISATION AND ADMINISTRATION OF THE FUND

Capitalisation
of the Fund

10. (1) The Fund shall consist of -

(a) monies allocated and appropriated from the County Revenue Fund by the County Assembly;

(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.

(2) The monies allocated under sub-section (1)(a) shall be appropriated for an initial period of five years from the date of commencement of this Act.

Opening of
Fund Account

11. (1) All monies received by the Fund shall be maintained in a separate bank account in the name of Kiambu County Youth Enterprise Development Fund 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.

Fund Manager

12. (1) There shall be a fund manager who shall be appointed by the Board in consultation with the County Executive Committee Member responsible for finance pursuant with the provisions of the Public

Finance Management Act, 2012.

(2) The County Executive Committee Member responsible for finance shall make regulations for the administration and management of the Fund.

Fund
Expenditure

13. (1) There shall be paid from the Fund –

- (a) loans to qualifying small enterprises;
- (b) operational expenses incurred in the administration of the Fund; and
- (c) monies as are necessary for the Board to carry out its mandate under this Act.

(2) The expenses incurred in paragraphs (b) and (c) of sub-section (1) shall not exceed ten percent of the Fund's loan book from time to time.

(3) The provision of any law or regulation relating to the management of public funds shall apply to the management of the Fund.

Establishment
of related
agencies

14. (1) The Executive Committee Member may, on the advice of the Board, establish -

- (a) a Kiambu County Youth Enterprise Development Agency to offer business development services to youth entrepreneurs at such fees as the Board may prescribe;
- (b) a Kiambu County Youth Employment Scheme Secretariat to facilitate the participation of small enterprises owned by the youth in the local and international labour market and their partnership with other agencies and organizations.

(2) The Board shall in consultation with the County Public Service Board, determine the staffing levels of the agencies that may be established under this section.

(3) An agency established under this section may perform any other function assigned to it by the Board provided that such function furthers the objectives of this Act.

Disbursements
from the Fund

15. The Board shall lend to the small enterprises either directly or through other mechanisms as the Board may determine.

- Application for a Loan
- 16.** (1) A small enterprise 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 small businesses on such terms and conditions as the Board may prescribe including –
- (a) applicable interest rate;
 - (b) form and manner of disbursement;
 - (c) form, manner and frequency of repayment; and
 - (d) such other terms and conditions as may be prescribed by the Board.
- (3) Any un-repaid loan, including interest thereon, shall be recoverable by the Fund as a civil debt.

- Winding Up of the Fund
- 17.** In the event of winding up of the Fund, the cash balances shall be transferred to the account designated by the County Treasury while other assets of the Fund shall be transferred to the County Government.

PART V – REPORTS AND AUDITING OF THE FUND

- Annual Estimates
- 18.** (1) At least three months before the commencement of each financial year the Board shall prepare or 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 a 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 5 of this Act.

- Financial statements and audits
- 19.** (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 County Executive Committee Member 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.

Public Audit Act, No. 12 of 2003

(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, employee or agent of the Authority 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.

Annual Report and Publication

20. (1) The Board shall, within a period of three months after the end of the financial year or within such longer period 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 the yearly balance sheet and such other statements of account as the Executive Committee Member shall require, together with the Auditor-General's report.

(2) 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.

(3) 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 the 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 – MISCELLENEOUS PROVISIONS

Offences

21. (1) An enterprise which -

(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.

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

Regulations

- 22.** (1) 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.

MEMORANDUM OF OBJECT AND REASONS

This draft Bill establish the Kiambu County Youth Enterprise Development Fund provide for the establishment of a Fund aimed at improving and stimulating the economy within Kiambu County in general and the micro and small-businesses owned by the youth residing in the County in particular. The Fund is further expected to promote the establishment of *new* micro and small businesses and industries by the youth and promote the development of *existing* micro and small businesses among the youth.

The Bill is structured as follows:

Section 1 provides for the short title of the Act when enacted.

Section 2 provides for the interpretations of terms used in the Act. This is intended to provide clarity during the interpretation and implementation of the Act.

Section 3 describes the object and purpose of the Act.

Section 4 establishes the Fund. It describes the application of the proceeds of the Fund and requires that access to the Fund's services be available in all parts of the County to the extent that it is practicable to do so.

Section 5 establishes the Board, which will be charged with the administration of the Fund.

Section 6 prescribes how the Board will be composed to ensure proper administration of the Fund. It also stipulates the qualifications of the Board members.

Section 7 prescribes the term of office of certain board members.

Section 8 outlines the conditions under which Board members may be removed from further serving on the Board.

Section 9 describes the powers of the Board to enable it execute the mandate of administering the Fund.

Section 10 provides for the manner in which the Fund will be capitalized including from appropriations from the County Revenue Fund for the first five years, donations, gifts, grants and such other funds as may accrue to the Fund.

Section 11 provides for the opening and management of the Fund account as a separate account in accordance with the provisions of the Public Finance Management Act, 2012

Section 12 provides for the administration of the fund by the board and makes provision for the appointment of a separate Fund Manager if necessary for the day-to-day management of the Fund. It also requires the Board to maintain records of all financial transactions, which are to be availed to the County Executive Committee Member responsible for Finance.

Section 13 provides for the manner in which the expenditure of the Fund shall be incurred. It also prescribes a limit to the maximum percentage of the Fund that should be allocated towards operational expenses to ensure that the monies within the Fund are largely utilized towards the realization of the objectives of the Fund and not towards operational expenses.

Section 14 makes provision for the Establishment of a Kiambu County Youth Enterprise Development Agency and Kiambu County Youth Employment Scheme Secretariat, which would provide business development services and facilitate the participation of small enterprises owned by the youth in the local and international markets.

Section 15 prescribes the manner in which the monies from the Fund shall be disbursed to qualifying small enterprises.

Section 16 prescribes the manner in which loan applications shall be made by small enterprises.

Section 17 prescribes the manner in which the fund would be closed and the allocation of the balance of the Fund and the assets of the Fund on such closure.

Section 18 provides for the preparation of the estimates of revenue and expenditure of the Fund for each financial year.

Section 19 prescribes the manner in which financial statements and audits of the Fund shall be conducted.

Section 20 provides for the preparation and publication of the annual report of the Fund.

Section 21 describes actions and omissions that constitute offences under the Act.

Section 22 provides for the promulgation of regulations to the Act.

The Act shall occasion additional expenditure to the County. The expenditure will be appropriated by the County Assembly.

.....
Chairman, Budget & Appropriations Committee