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SUPPLEMENT***

MANDERA COUNTY ACTS, 2014

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**THE MANDERA COUNTY TRADE DEVELOPMENT FUND ACT,
2014**

No. 6 of 2014

Date of Assent; 20th November, 2014

Date of Commencement; 11th December, 2014

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AN ACT of Mandera County Assembly to provide for the establishment of the Mandera County Trade Development Fund, to provide for establishment of the Trade Development Board for management and administration of the Fund, and for connected purposes

ENACTED by the County Assembly as follows—

PART 1—PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Mandera County Trade Development Fund Act, 2014 and shall come into operational upon enactment by the Mandera County Assembly.

Interpretation

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

“Administrator of the Fund” means a person designated as such under Section (16) of the Act;

“board” means the Trade Development Board under Section (4) of the Act;

“eligible administrative cost” means administrative expenditure allowable as determined by the Board;

“evaluation criteria” means criteria used to evaluate group application under this Act;

“youth” has meaning assigned to it under Article 260 of the Constitution;

“women” means a person of the female gender who is above 18 years of age;

“executive member” means the county executive committee member responsible for matters relating to Trade Development;

“chief officer” Means the Officer responsible for matters relating to Trade Development;

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

“fund” means the Mandera Trade Development Fund established under this Act;

“county assembly” means County Assembly members for Mandera County elected in accordance with Article 177 of the Constitution; and

"governor" means a County Governor for Mandera County elected in accordance with Article 180 of the Constitution;

**PART II—ESTABLISHMENT OF FUND, OVERSIGHT BOARD
AND ENTERPRISE COMMITTEE**

Establishment of the Fund

3. (1) There is established a fund to be known as the Mandera County Trade Development fund

(2) the Fund shall consist of—

- (a) monies appropriated by County Assembly;
- (b) grants and donations;
- income generated from the proceeds of the Fund;
- (c) all other sums as may accrue to the Fund from any other source.

(3) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

Object and Purpose of the Fund

4. (1) The object and purpose for which the Fund is established are—

- (a) to expand access to finances in promotion of youth and women business and enterprises at ward level for economic growth;
- (b) to generate gainful self-employment for the youth and women;
- (c) to model an alternative framework in funding community driven development;
- (d) the fund may be provided for value addition processes and trading purposes;
- (e) develop a quality and profitable loan portfolio;
- (f) attract and grow more customers from small and micro enterprises market segments; and
- (g) fund unique business ideas that support new business set ups and bridge essential consumer services gaps i.e. restaurants, kinyozi, cyber café, shops, jua kali artisans and others essential services for different Wards.

Establishment of the Board

5. There is established a board to be known as the Mandera County Trade Development Board.

Composition of the Board

6. (1) the Board shall consist of—

(a) the chairperson of the Board who shall be competitively sourced by the County Public Service Board with the Approval of the County Assembly and appointed by the Governor. The roles of Chairperson—

- (i) convening Board meetings;
- (ii) presiding over all Board meetings and shall have both deliberate and casting vote;
- (iii) he or she shall Grant authority to hold board meetings;
- (iv) monitoring activities of the board within the jurisdiction.

(b) the Chief Officer responsible for matters relating to finance;

(c) the Chief Officer responsible for matter relating to Trade who shall be—

- (i) the Secretary of the Board;
- (ii) accounting Officer of the board and has the overall financial and Administrative responsibilities for the Fund;
- (iii) advise the board in accordance with policy directives governing the board;
- (iv) keep reports of matters relating to Trade Development in the County;
- (v) receiving, registering vetting and appraising applications for loan consideration by boards;
- (vi) writing minutes of board meetings and maintaining proper records of board's affairs;
- (vii) execution of board's decisions and ministry's directives regarding board operations;
- (viii) receiving and account for funds of the board;
- (ix) preparing and maintaining board's records and books of accounts;

- (x) regular submission of all returns and reports of the board operations as required by the Executive Committee member for Trade;
 - (xi) custodian of all board assets and documents including the official seal and stamps;
 - (xii) undertake regular monitoring of loan recipients to ensure that the terms of loan agreement are complied with.
 - (d) the Chief Officer responsible for matters relating to Social service;
 - (e) four persons nominated by the Executive Member and appointed by the Governor—
 - (i) one person nominated by the most representative association of traders in the County.
 - (ii) one person nominated by the most representative association of women engaged in micro and small enterprises in the County;
 - (iii) one person nominated by the most representative association of youth engaged in micro and small enterprises in the County;
 - (iv) one person nominated by the most representative association of persons with disability engaged in micro and small enterprises in the County;
 - (f) The Trade Officer, County Legal Advisor and the County Director of Social Services who shall be co-opted Board members to serve on it for such length of time as it deems necessary, when their assistances or Technical advice may be required, but a person so co-opted shall neither be entitled to vote in a meeting of the board nor be counted as a member thereof for the purpose of forming a quorum.
- (2) The Executive Member shall cause the names of persons constituting the Board to be published in the *Kenya Gazette*.
- (3) The board shall be in office for a term of three years period after which it can be reconstituted.

Code of Conduct for the Board

- 7.** (1) Board Members shall not use their office—
- (a) to improperly enrich him/herself or others using board's funds;

- (b) advance loans to him/herself, business associate, or a corporation partnership or other body in which the member has an interest;
- (c) accept gifts or favours from a person who has an interest that may affect the carrying out of his/her duties;
- (d) divulge board's information to unauthorized users;
- (e) use his/her best efforts to avoid being in a position in which his/her personal interests conflict with his/her duties.

Functions of the Board

- 8.** (1) The functions of the Board shall be to—
- (a) provide overall management, design and oversight the Fund;
 - (b) consider, verify and approve funding for groups in the Wards;
 - (c) approve disbursement of the Fund;
 - (d) Receive reports on the performance of the Fund;
 - (e) develop relevant guidelines and review them as the need arises, to guide the operations and implementation of the Fund;
 - (f) monitor and evaluate the programs and activities under the Fund;
 - (g) prepare annual report on the operations and performance of the Fund to the County Executive for presentation to the County Assembly;
 - (h) oversee the management and administration of the Fund; including recoveries from loans beneficiaries; and
 - (i) put in place necessary mechanisms for sections and their enforcement in case of loan repayment default;

Board Seal

- 9.** The Board Seal—
- (a) shall be under the safe custody of the Secretary. The seal shall be used on authority of the Board and shall be authenticated by the signatures of the Chairman and Secretary of the Board;
 - (b) shall be the common Seal and Stamp of the fund, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Establishment of ward Trade Development Committee

10. There is established a Committee to be Known as the ward Development Committee (hereafter referred to as “Committee”) in every ward.

(2) the Committee shall consist of—

- (a) elected MCA representing the ward-Patron;
- (b) the ward Administrator-Chairperson;
- (c) five persons appointed by the Executive Member in consultation with the elected MCA representing the ward as follow —
 - (i) one person nominated by the most representative association of traders at the ward;
 - (ii) one person nominated by the most representative association of women engaged in micro and small enterprises at the ward;
 - (iii) one person nominated by the most representative association of youth engaged in micro and small enterprises;
 - (iv) one person nominated by the most representative association of persons with disability engaged in micro and small enterprises at the ward;
 - (v) one person nominated by the most representative religious group at the ward.

(3) The Executive Member shall cause the names of persons constituting the Committee to be published in the Kenya Gazette.

Function of the Committee

11. (1) The Function of the Committee shall be to—

- (a) identify the targeted groups within the Wards;
- (b) receive application from the groups;
- (c) evaluate applications based on the guidelines for evaluation of applications;
- (d) make recommendations to the Board for legible Groups from the Wards;
- (e) undertake monitoring of the activities including making official impromptu visit to the beneficiaries;
- (f) manage and oversee the implementation of the Fund at the Ward level;

- (g) compile, update and forward progress reports to the Board on quarterly basis; and
- (h) provide oversight to the disbursement and repayments in their respective Wards.

PART III— FUND ALLOCATION, MANAGMENET AND ELIGIBILITY CRITERIA

Capital of Fund

12. The initial capital of the Fund shall be all moneys appropriated by County Assembly in the financial year 2013-2014 for SME, Youth and Women empowerment.

Fund allocation

- 13.** (1) The initial capital of the Fund shall be allocated as follows—
- (a) an amount not exceeding twenty per cent shall be earmarked for capacity building and administration cost of both the board and ward level committee for the Fund and target beneficiary groups;
 - (b) for the balance of the Fund, the Board shall allocate across all 30 Wards using the criteria below;
 - (i) 70% population quota;
 - (ii) 30% equal share.

Management of the Fund

- 14.** (1) For management of the Fund—
- (a) the access by eligible groups of the Fund, Shall be subject to assessment and approval of the applications by the ward trade development committee;
 - (b) The eligible qualifying amounts for a group shall be a minimum of KSh. Fifty Thousand (50,000) and a maximum of KSh. Five Hundred Thousand (500,000) shillings at any one time.
- (2) In determining the total amount a group is eligible to receive, the following criteria shall be applied—
- (a) the length of time the group has been in existence;
 - (b) the total amount contributed by the group; and
 - (c) The current status of contribution; and the proposed financial plan for the loan applied.

Expenditure on the Fund

15. (1) The Expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the administrator of the Fund and approved by the Board at the beginning of the financial year to which they relate.

(2) Any revision of the approved annual work programme, and of any cost estimate, shall be referred to the Board for approval.

(3) Some of the costs that can be charged include—

- (a) Business Management Trainings for the groups;
- (b) Business Extension, Advisory and Counseling Service;
- (c) Information Education Communication Materials;
- (d) Legal Expenses, whenever legal expense are incurred in recovering debts from loan defaulters, the total amount must be added to the defaulters outstanding loan. The amount subsequently recovered in respect to legal fees shall be transferred to the Trade Development Fund account;
- (e) any other costs approved by the Board.

Administration of the Fund

16. (1) The County Public Service Board shall competitively source for a person responsible for administering the fund called Fund Manager.

(2) A person shall not be appointed the Fund Manager unless that person has—

- (a) a Kenyan citizenship;
- (b) a Degree from a recognized Institution, Preferably Accounting option;
- (c) experience in micro and small enterprise development;
- (d) management experience in the areas of both personnel and budget control;
- (e) an understanding of the diversity within the County;
- (f) a visionary and strategic thinking;
- (g) capacity to work under pressure to meet strict deadlines;
- (h) met the requirements of Chapter Six of the Constitution on leadership and integrity.

(3) The administrator of the fund shall ensure that the earnings of, or accruals to a County Public Fund are retained in the fund, unless the County Executive Committee Member for Finance, Trade and Board directs otherwise;

(4) The administrator of the fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.

(5) The administrator (Fund Manager) of the Fund shall—

- (a) open and operate a bank account on the approval of The Executive for Finance;
- (b) supervise and control the administration of the Fund;
- (c) consult with Executive Committee for Finance, Trade and the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of account and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the County Auditor, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the County treasury and the statement shall be prepared in such manner as the public Sector Accounting Standards Board shall prescribe;
- (f) furnish additional information as he or she may consider to be proper and sufficient for the purpose of examination and audit by the County Auditor in accordance with the provision of the Public Audit Act; and
- (g) prepare a quarterly report on the receipt into and issues out of the Fund and submit it to the Executive Member for Gazettement by the 21st of every four months.

Eligibility criteria for applicants

17. (1) The applicants who shall qualify for loan must—

- (a) be a Kenyan citizen
- (b) be a resident of Mandera County;
- (c) is registered with the department Social Services, Co-operative or the registrar of societies;
- (d) the Group or society membership of minimum 10 to a maximum 20 members;

- (e) the Groups shall either be self-help groups, groups for persons with disabilities, Youth groups or Women groups and the Youth group membership shall be between 18 and 35 years of age. The women's group must be made up of women;
- (f) preference will be granted to groups that have been in existence for at least one year;
- (g) be based and operating within the Ward it seeks to make application for consideration;
- (h) operate a table banking (Chama) structures where members make monthly contribution according to the groups internal guidelines, evidence of monthly contribution will be a requirement;
- (i) the group shall be able to contribute 10% of the amount requested;
- (j) hold a bank account in the name of the group;
- (k) an application to the fund shall be accompanied by a signed guarantee form executed by each of the group individually committing to repay the loan requested by the group;
- (l) individual group member reference letters from recognized leaders in business, religious organization, county government administration in the location validating the members credibility; and
- (m) no second loan should be granted to a group until they have fully repaid the previous loan.

Fund disbursement

18. (1) the fund shall be disbursed from the Fund Account under the following conditions—

- (a) all disbursements from the fund shall be approved and minuted by the Board;
- (b) all disbursements from the Fund shall be to the successful groups within the Wards;
- (c) all disbursements from the Fund shall be made through the bank account maintained by the successful group;
- (d) the Board shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources;

- (e) before the loans disbursed the appropriate procedures loan documentation must be adhered to;
- (f) a separate file must be opened for each new group to contain the following —
 - (i) the application form;
 - (ii) vetting and appraisal form;
 - (iii) recent coloured photograph of the group officials affixed on their file;
 - (iv) photocopy of both sides of the group members identity cards;
 - (v) photocopy of a valid business permit and group registration certificate;
- (g) funds issued register shall be opened to record all loans disbursed with the recipient's name, identity card number ,cheque number ,amount, signature and date;
- (h) successful loan applicants shall be notified by the secretary through letters of offer which must be acknowledged and signified. The offer for a loan shall be valid for a period not exceeding sixty (60) days.

Repayment of loan

19. (1) The repayment period for each loan element shall be determined by the followings —

- (a) the amount of money borrowed;
- (b) the size of the group;
- (c) the proposed financial plan for the loan repayment;
- (2) the loan shall not attract any interest.

(3) all groups shall be allowed three months grace period before commencement of repayment of the loan element but all loans shall be payable within two years from the expiry of grace period.

(4) The Repayment shall be on monthly installment bases.

(5) loan recipients' shall deposit by cash or cheques their monthly repayments for loan proceeds in to the Trade Development Fund Repayment Account and submit a copy of the deposit slip to the Fund Administrator who shall issue and acknowledge receipt to the receipt group.

(6) Upon variable proof of loan repayment of all loan proceeds' the Board shall issue a discharge certificate to the recipient group with respect to the loan repayment.

Managing delinquency and default

20. (1) To discourage late repayment complete failure to repay loans, the steering committee shall maintain a strict system of identifying such cases and taking action in good time.

(2) A loan shall be considered to be delinquent when a borrower fails to repay two (2) consecutive installments. This is equivalent to 60 days.

(3) A loan shall be considered to be in default when the borrower is 90 days late in repayment and all efforts to make them to repay has completely failed.

(4) In the event of the above two scenarios, the following will apply—

- (a) field officers will note all cases of delay during monitoring. If a case of delinquency is noted the field officer will visit the client and require for an explanation;
- (b) after another one month, the field officer will visit the client and issue a demand notice;
- (c) when the case goes beyond 60 days, a final demand notice shall be issued by the officer in charge of steering committee;
- (d) at the end of 90 days, the case shall be noted and legal action taken.

Retention of receipts

21. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Unlawful Purposes

22. (1)The loan shall not be used for—

- (a) re-payment of other loans;
- (b) purchase of motor vehicles;
- (c) erection of buildings;
- (d) purchase of lands;
- (e) illegal businesses as per Kenya's law or Islamic Sharia.

PART IV — FINANCIAL PROVISIONS**Financial year.**

23. The financial year of the Office shall be the period of twelve months ending on the 30th day of June in each year.

Annual estimates

24. (1) 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 year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and, in particular.

Fund Account

25. (1) A bank account of the Fund called Mandera County Trade Development Fund shall be opened and maintained at the commercial bank approved by the Executive Committee Member for finance and planning.

(2) The signatories to the Account of the Fund maintained in accordance with section 16 (1), shall be the fund manager, chairman and one other person appointed by the Executive Member for finance;

(3) Full and separate records and accounts of the operations of the board shall be kept. Final accounts, prepared as at 30th June of each year, shall be prepared and signed by the Chairman and the Secretary of the Loan Board. The signing shall be such that the signature of the Secretary shall be mandatory on all payment of Cheques and / or instruments intended for actual release of money from the Fund, plus any two of the other three signatories.

(4) The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Office.

Fund Audit

26. (1) Within a period of three months after the end of each financial year, the Board through the Administrator shall submit to the County Auditor the accounts of the fund in respect of that year together with a—

- (a) statement of the income and expenditure of the fund during that year; and
- (b) statement of the assets and liabilities of the fund on the last day of that financial year.

(2) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions relating to public audit audit reports shall be sent, in duplicate, with signed copies of the final accounts, to the County Executive.

PART V— MISCELLANEOUS

Winding –up of the Fund

27. (1) The County Executive Committee Member for Finance may wind up a County Public Fund with the approval of the County Assembly.

(2) On the winding up of a county public fund—

- (a) the Administrator of the Fund shall pay any amount remaining in the Fund into the County Exchequer Account;
- (b) the County Executive Committee member for finance shall, with the approval of the County Assembly, pay any deficit in the fund from the County Exchequer Account;
- (c) all assets of the fund be transferred to the Ministry for the time being responsible for matters relating to Trade.

(3) The administrator of the fund shall—

- (a) prepare accounts for the fund for each financial year;
- (b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and
- (c) present the financial statements to the County Assembly.

County Champion and Patron

28. (1) The Governor shall be the County champion who shall give overall policy direction and enhance for fund's prestige and profile.

(2) In furtherance to sub-section (1), the Governor shall—

- (a) receive annual report on the performance of the Fund and review the implementation progress;
- (b) set the overall agenda for the Fund, by ensuring commitment at the highest level of government; and
- (c) recognize the Fund's success stories through an annual awards ceremony.

Guiding principle

29. In fulfilling the Act's mandate, the Executive Member for Trade and The Executive Member for Finance, the Board and the Committee

must act in accordance with the values and principles set out in the Constitution and any other written law.

General penalty

30. A person who contravenes a provision in this Act for which a penalty has not been provided for, commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Regulations

31. The Executive Member may make regulations for the proper administration of this Act.

FIRST SCHEDULE (s.8)**MEETINGS AND PROCEDURE FOR THE BOARD****A. Meetings of the Board shall comply with;**

- 1.** Meeting Quorum shall be half members and above.
- 2.** The Board Chairperson shall convene the first meeting of the Committee.
- 3.** The Board shall decide when and where it meets and the meetings shall be convened by the chairperson.
- 4.** The Secretary shall prepare and dispatch the following; tentative list of agenda, Current financial position of the board, proposed budget for the meeting and Funds position on monthly, quarterly and annual basis as required. Finally Invitation letters which shall indicate a date fourteen days prior to the meeting.
- 5.** The Board shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
- 6.** Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.
- 7.** A meeting shall be presided over by the chairperson or in his or her absence, by the vice-chairperson.
- 8.** The members of the Board shall elect a vice-chairperson from among themselves.
- 9.** The chairperson and vice-chairperson shall not be of the same gender.
- 10.** If any person has a personal or fiduciary interest in any matter before the Board, and is present at a meeting of the Board or any 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.
- 11.** A disclosure of interest made under paragraph 9 shall be recorded in the minutes of the meeting at which it is made.
- 12.** A person who contravenes paragraph 9 commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding Six months, or to both.

13. No member or staff of the Board shall transact any business or trade with the Board.

14. (1) Subject to paragraph 13, the quorum of the meeting shall not be less than half of the appointed members.

15. Where there is a vacancy in the Board, the quorum of the meeting shall not be less than three appointed members.

16. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.

17. The Board shall keep minutes of proceedings of its meetings and decisions taken.

18. A minute book and Members register shall be maintained by the secretary for the deliberations of the board including the index of the agenda and every member present in the meeting shall sign against his or her name in the register.

SECOND SCHEDULE (s.11)**MEETINGS AND PROCEDURE FOR THE WARD COMMITTEE**

1. The Committee Chairperson shall convene the first meeting of the Committee.

2. The Committee shall decide when and where it meets and the meetings shall be convened by the chairperson.

3. The Committee shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

4. Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.

5. A meeting shall be presided over by the chairperson or in his or her absence, by the vice-chairperson.

6. The members of the 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. The chairperson and vice-chairperson shall not be of the same gender.

8. If any person has a personal or fiduciary interest in any matter before the Committee, and is present at a meeting of the Committee or any 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.

9. A disclosure of interest made under paragraph 8 shall be recorded in the minutes of the meeting at which it is made.

10. A person who contravenes paragraph 8 commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding Six months, or to both.

11. No member or staff of the Committee shall transact any business or trade with the Committee.

12. (1) Subject to paragraph 13, the quorum of the meeting shall not be less than half of the appointed members.

13. Where there is a vacancy in the Committee, the quorum of the meeting shall not be less than three appointed members.

14. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.

15. The Committee shall keep minutes of proceedings of its meetings and decisions taken. A minute book and Members register shall be maintained by the secretary for the deliberations of the board including the index of the agenda and every member present in the meeting shall sign against his or her name in the register.