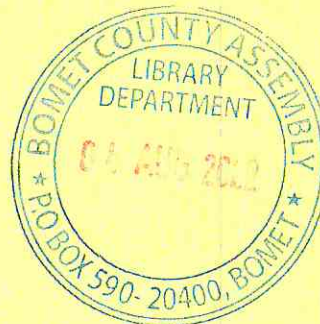


SPECIAL ISSUE

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REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

BOMET COUNTY BILLS, 2019

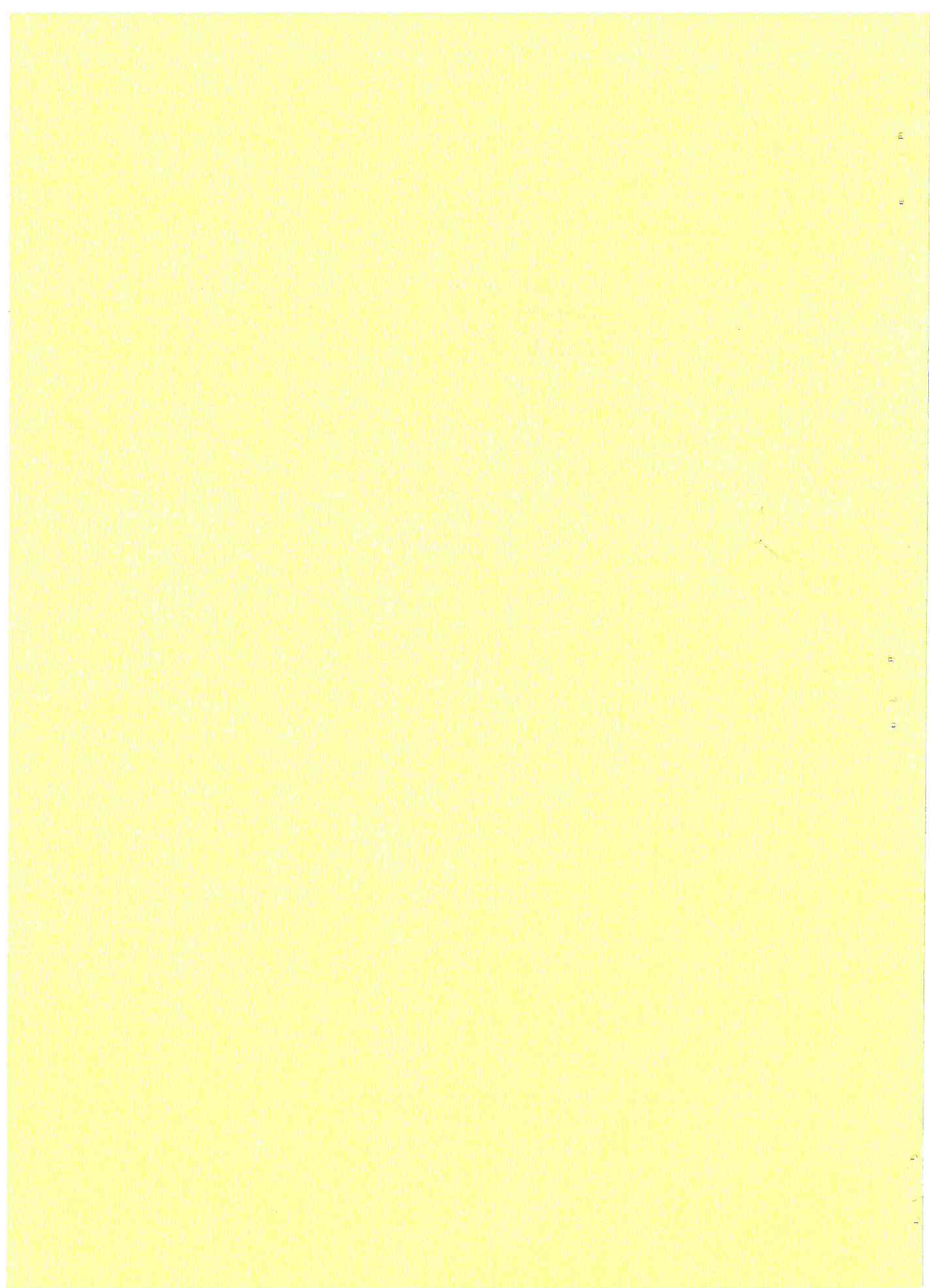
NAIROBI, 15th March, 2019

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**THE BOMET COUNTY ENTERPRISE
DEVELOPMENT FUND BILL, 2019**

A Bill for

**AN ACT of the County Assembly of Bomet to provide
for the establishment and management of the
Bomet County Enterprise Development Fund and
for connected purposes.**

ENACTED by the County Assembly of Bomet, as
follows—

PART I – PRELIMINARY

1. This Act may be cited as the Bomet County Enterprise Development Fund Act, 2019. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - “Act” means the Bomet County Enterprise Development Fund Act, 2019.
 - “beneficiary” means a successful applicant of a loan from the Fund;
 - “business” means any legal activity of making, buying or selling commodities, products or services;
 - “Chief Officer” means the Chief Officer for the time being responsible for the implementation of the fund;
 - “Director” means the Director appointed under section 15 of the Act;
 - “Executive Member” means the County Executive Committee Member for the time being responsible for implementation of the Fund;
 - “existing business” means a business which has been in existence as a going concern for one year and above;
 - “financial institution” means banks and microfinance institutions as licensed by the Central Bank of Kenya;
 - “financial year” means the period of twelve months ending the 30th June in each year;
 - “Fund” means the Bomet County Enterprise Development Fund established under section 6 of this Act;
 - “Enterprise Development fund” has the same meaning ascribed to the word “fund”;

“micro enterprise” means any business in any sector which—

- (a) does not exceed five hundred thousand shillings in its annual turnover;
- (b) employs less than ten people; and
- (c) has assets and financial investment, where determined under the Micro and Small Enterprise Act, 2012 of a value not exceeding—
 - (i) ten million shillings in plant, machinery or registered capital for the manufacturing sector; or
 - (ii) five million shillings in equipment or registered capital for the retail, service and farming sector’

No. 55 of 2012

“person with disability” means a person or an organization of person with disability registered under the Persons with Disabilities Act’

No. 14 of 2003

“small enterprise” means any business in any sector which—

- (a) has an annual turnover of between five hundred thousand shillings and five million shillings;
- (b) employs between ten and fifty people; and
- (c) has assets and financial investment, where determined under the Micro and Small Enterprise Act, 2012 of a value between—
 - (i) ten million shillings and fifty million shillings in plant, machinery or registered capital for the manufacturing sector; or
 - (ii) five million shillings and twenty million shillings in equipment or registered capital for the retail, service and farming sector;

No. 55 of 2012

“officer administering the Fund” means the officer designated as such under section 7 of this Act;

“semi financial institution” includes any institution registered as a cooperative, community based organization or self-help group operating within the County for at least one year whose objectives includes economic welfare of its members;

“start-up business” means a business which is a business idea or a concept that has not yet commenced or a business which has commenced and in operation for less than one year;

“resident” means a person who either, for the last five years resides within the County, or owns a permanent resident within the County, or for the last five years carries out business within the County;

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

“vulnerable person” means a marginalized or disadvantaged person or a member of a marginalized or disadvantaged group resident within the County.

3. This Act shall guide—

Application

- (a) Micro, Small and Medium Enterprises in applying for a loan from the Fund;
- (b) the youth, women, vulnerable persons and persons with disabilities in applying for a loan from the Fund;
- (c) the officer administering the Fund in the administration, utilization and in recovery of any monies lent from the fund;

4. The object of the Act is to provide for—

Objects of the Act

- (a) establishment and administration of the Bomet Enterprise Development Fund;
- (b) promotion of entrepreneurship, job creation and self-employment for the youth, women, vulnerable persons and persons with disabilities in the county;
- (c) establishing a framework for investing in and facilitating growth of micro and small enterprises to spur economic growth in the County; and
- (d) promotion of enterprise development in the county.

5. The administration of the fund shall be guided by the following principles- principles—

Guiding principles

- (a) flexible loan products;
- (b) coordinated economic development;

- (c) prioritization of economic activities for preferential financing in line with the County Integrated Development Plan;
- (d) ease of access of funds; and
- (e) respect for rule of law.

**PART II—ESTABLISHMENT AND
ADMINISTRATION OF THE BOMET COUNTY
ENTERPRISE DEVELOPMENT FUND**

6. (1) There is established a Fund to be known as the Bomet County Enterprise Development Fund.

Establishment of
the fund.

(2) The Fund shall consist of—

- (a) monies appropriated by the County Assembly;
- (b) any grants, gifts, donations, loans or other endowments granted to the Fund;
- (c) income generated from the proceeds of the Fund;
- (d) interest earned from the funds deposits, loan or other lawful sources; and
- (e) any monies accruing to or received by the Fund from any other lawful sources.

7. (1) There is established a Committee to be known as the Bomet County Enterprise Development Fund Management Committee, which shall consist of—

Funds
Management
Committee

- (a) the Executive Member who shall be chairperson;
 - (b) the Chief Officer responsible for Finance;
 - (c) the Chief Officer responsible for Trade;
 - (d) the Chief Officer responsible for Youth affairs
 - (e) the Chief officer responsible for Social services and matters related to persons living with disabilities.
 - (f) the Chief Officer responsible for Co-operative Development
 - (g) two members to be appointed by the Governor
- (2) The Committee shall—
- (a) prescribe guidelines for distribution of fund monies to financial and semi financial institutions for lending to beneficiaries on behalf of the fund;

- (b) prescribe guidelines for the processing applications for loans by financial and semi financial institutions designated to disburse loans from the fund;
- (c) liaise with financial and semi-financial institutions for the management and lending of allocated fund monies on a revolving basis;
- (d) ensure the repayment of funds distributed to financial and semi-financial institutions at the end of the term period and
- (e) supervise the day-to-day running of the Fund

(3) The meetings of the Committee shall be convened by the Chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(4) The quorum for a meeting of the Committee shall be the chairperson and any three members.

8. (1) All monies received by the Fund shall be maintained in a separate bank account in the name of Fund, opened and administered in accordance with the provisions of the Public Finance Management Act.

Fund bank
accounts
No. 18 of 2012

(2) The receipts, earnings and accruals to the Fund and the balance of the Fund at the close of each year shall be retained by the Fund for the purposes for which the Fund is established.

(3) The signatories of the fund's bank account shall be—

- (a) the officer administering the Fund whose signature shall be mandatory; and
- (b) two persons designated by the Executive Member for the time being responsible for finance.

(4) The Executive Member responsible for Finance may from time to time issue guidelines for proper implementation of this section.

9. (1) The money in the Fund shall be utilized for granting any of the following loans—

Utilization of the
Fund

- (a) capital financing for business;
- (b) financing local purchase order or local supply order;

- (c) business support financing to micro, small and medium enterprises;
 - (d) asset financing;
 - (e) agri-business financing; and
 - (f) such other loan product as the Fund Committee may, by regulations prescribe.
- (2) Loans from the fund will be restricted for use in investment in income generation activities.
- (3) No moneys shall be appropriated for—
- (a) salaries and normal operations.
 - (b) other applications outside the business process or away from activities described in the loan application.
- (4) Where the Committee in sub-section (1), finds it necessary for purposes of ensuring coordinated economic growth and equitable distribution of resources it may, with the approval of the County Executive Committee, reserve not more than five percent of funds available for capital and business support financing loans to beneficiaries of a particular area or a business idea.
- (5) In addition to any other monies appropriated by the County Assembly for such functions, not more than three percent of the fund may be utilized for—
- (a) facilitating training and mentorship programmes;
 - (b) monitoring and evaluating utilization of the loan;
 - (c) facilitating development and promotion of loan products; and
 - (d) meeting administration and operation costs of disbursing the fund and ensuring repayments.

10. The Fund may place on deposit with a bank or otherwise invest the funds which are not immediately required for its purposes and the interest earned from such investment shall be paid to the fund's bank account.

Investment of funds

11. The monies of the Fund shall be adequately insured against all risks and the costs of such insurance shall be apportioned to the loan applicant.

Fund insurance

12. (1) The Fund shall at the close of the financial year submit an annual report to the County Assembly containing details of—

Annual report

- (a) total loans disbursed;
- (b) loan products offered by the Fund;
- (c) strategies employed to achieve the Fund's Objectives;
- (d) impact of the Fund against its objectives;
- (e) the status of uptake loans in each ward;
- (f) the performance of each financial or semi financial institution contracted under this Act;
- (g) the rate of repayment and the strategies for management of defaulters; and
- (h) any other information that the Executive Member may deem necessary.

(3) The fund committee shall publicize the report within the County.

13. The fund committee through the Executive Member shall, with the approval of the County Executive Committee, prescribe policies, rules and guidelines for better implementation of this Act.

Policies, strategies and guidelines

14. The officers in charge of decentralized units and departments responsible for target beneficiaries may—

Public participation and mobilization

- (a) publicize, sensitize and mobilize the target beneficiaries to participate in the Fund;
- (b) assess the economic needs of their area of administration and recommend appropriate loan products to the Executive Member; and
- (c) assess the impact of the utilization of the Fund in their areas of administration and submit a report to the Executive Member.

15. (1) There is established the Directorate of Enterprise Development Fund whose functions shall include—

Directorate of Enterprise Development Fund

- (a) serve as the secretariat to the Fund Committee;
- (b) administer the implementation of this Act;

- (c) developing and implementing programmes to sensitize and promote the Fund among the residents;
- (d) collecting and maintaining data of beneficiaries;
- (e) coordinating the operations of the directorate to ensure performance of its mandate;
- (f) recommending loan products to the fund committee;
- (g) recommending to the fund committee policies, strategies, administrative structure, systems and processes for better implementation of this Act;
- (h) assessing and advising the fund committee on the impact of the loan products;
- (i) advising the fund committee on any matter relating to fund; and
- (j) undertaking any other function assigned under this Act or by County Executive Committee for better realization of the objects of this Act.

(2) The Directorate shall be headed by a Director appointed by the County Public Service Board.

(3) The Director shall be responsible for the day to day operations and implementation of the Directorate's functions and shall be the officer responsible for administering the Fund.

16. (1) The County Public Service Board may appoint such other members of staff to the directorate as may be necessary for better administration of the Fund.

Other
members staff

(2) Notwithstanding the provisions of this Act, the Chief Officer may deploy such members of staff to implement the provisions of this Act and in particular—

- (a) assess potential financial and semi financial institutions eligibility to disburse loans on behalf of the fund ;
- (b) review potential applicant's credit worthiness and advice applicants on preparedness;
- (c) review loan applications and any attachments, including evaluation of a business proposal;

- (d) recommend to designated financial and semi financial institutions administering the fund disbursements potential applicants for consideration;
- (e) follow up on fund performance including loan repayment status; and
- (f) undertake such other duties as may be assigned from time to time.

(3) The Executive Member may prescribe regulations for better implementation of this section.

PART III – APPLICATION, CONDITIONS AND DISBURSEMENT OF THE LOAN

17. (1) A person shall not be eligible for a loan from the fund under this Act unless that person is—

Eligibility for a loan

- (a) a resident; and
- (b) is either a youth, woman, person with disability or a vulnerable or disadvantaged person or.
- (c) is a owner of a micro, small or medium enterprise

(2) A business shall not be eligible for a loan from the fund under this Act unless it is—

- (a) licensed in the county; and
- (b) is micro, small or medium enterprise.

(3) Notwithstanding the provisions of subsection (1), a person may not qualify for a loan where that person is listed as a defaulter by the Credit Reference Bureau.

(4) For purposes of this Part, a person shall be deemed to be a qualifying applicant if that person has met the requirements under this section.

18. (1) In addition to any other requirements under this Act, an applicant may be granted capital start-up loan under this Act to a maximum of Kenya Shillings fifty thousand subject to the applicant—

Requirements for capital start-up

- (a) submitting a business proposal; and
- (b) providing a security for the loan.

(2) For purposes of this section, a security may include chattels, movable and immovable securities.

(3) Notwithstanding the provisions of subsection (1), the Fund Committee may, with the approval of the County Executive Committee, prescribe the limits of the capital start-up loan by a notice.

19. (1) In addition to any other requirements, an asset acquired from the proceeds of a loan under this Act shall be charged by the disbursing institution until the loan is fully paid, and in the event of default, the asset shall be repossessed by the disbursing institution on behalf of the fund and disposed of to recover any outstanding debt.

Asset financing

(2) Where applicable, a beneficiary shall insure an asset financed under this sections against all risks.

20. (1) Agriculture produce or livestock acquired from the proceeds of a loan granted under this Act may, in the event of default, be attached and disposed of to recover any outstanding debt.

Agribusiness
financing

(2) Where applicable, a beneficiary shall insure livestock and agriculture produce financed under this sections against all risks.

21. (1) An applicant may be financed up to fifty percent of the value of a local purchase order or a local supply order granted by the County Government and shall not be required to provide any security.

Local Purchase
Order financing

(2) An applicant may be financed up to thirty percent of the value of a local purchase order or local supply order granted by any other entity or agent subject to that person providing a security for a loan.

22. (1) Loan applications shall only be processed through a financial or semi-financial institution.

Application
process

(2) An application for a loan shall be made to the financial institution or semi financial institution disbursing funds from the fund in the format prescribed by the financial institution.

(3) An application under this section may be made by a person or groups of persons.

(4) The financial or semi-financial institution administering fund monies may on satisfactory evaluation of applications disburse or authorize disbursement of loans from fund monies to successful applicant's subject to the availability of the funds.

23. (1) Upon execution of a Memorandum of Understanding under this section, the Fund Committee shall in writing appoint a semi financial institution operating within the County to process and disburse loan products under this Act to its members.

Processing an application through a semi-financial institution

(2) The Memorandum of Understanding under subsection (1) shall include—

- (a) the provisions that the loan products shall be disbursed to its members only;
- (b) the amount of money advanced to the semi financial institution and any money contributed by the semi financial institution or other partners;
- (c) the period the semi financial institution is allowed to utilize the money;
- (d) conditions for utilization of the money advanced;
- (e) the date of repayment of the total amount deposited in their account to the fund account;
- (f) a clause to commit the semi financial institution to the loan conditions, limits and interest rates set by the fund;
- (g) undertaking by the semi financial institution to guarantee the members loans and to reimburse the fund in the event of default by any of its members;
- (h) undertaking to insure the total amounts disbursed to its account by the fund against all risks; and
- (i) termination and consequences of termination.

(3) A semi financial institution appointed under this section shall apply to the fund committee administering the fund for an allocation from the Fund on behalf of its members and shall give a guarantee equivalent to the sum borrowed.

(4) A guarantee of the members' shareholding may be given by a resolution of the members committing the members shares in the financial institution as a lien for any amounts owing to the fund.

(5) an application under this section shall be accompanied by—

- (a) registration documents;
- (b) list of the members, their contacts and total shareholding;
- (c) a resolution of the members to borrow;
- (d) a resolution to guarantee the loan; and
- (e) a copy of the Memorandum of Understanding executed under this section.

(6) The fund committee shall consider the application under this section and where satisfied that the semi financial institution is committed to improving the economic welfare of its members and has the organizational and governance structure to guarantee payment of the loan, shall, disburse the loan to the financial institution.

(7) A semi financial institution shall only disburse the loan products to its members in accordance with its rules and regulations

(8) In addition to any other remedy under any written law, where semi financial institution is unable to repay the total loan advance as per the Memorandum of Understanding, the fund shall have the right to recover the amount in full either or from the semi financial institution's guarantee, the member's shareholding or directly from the individual member to whom a loan was advanced as if the fund had entered into an agreement with the individual member.

(9) A semi financial institution shall prepare a quarterly report and submit to the fund committee administering the fund detailing—

- (a) the amounts disbursed to the date of reporting;
- (b) the list and contacts of the member who has been granted a loan;
- (c) the rate of repayment; and
- (d) assessment of the impact of the loan granted.

(10) The Executive Member may prescribe rules for better implementation of this section.

24. (1) The Fund Committee shall, upon execution of a memorandum of understanding, appoint a financial institution to process and disburse loans to applicants under this Act.

Appointment of
a financial
institution

(2) The Memorandum of Understanding under subsection (1) shall include—

- (a) the provisions that the loan products shall be disbursed to qualifying applicants;
- (b) the amount of money advanced to financial institution;
- (c) the period the financial institution is allowed to utilize the money;
- (d) conditions for utilization of the money advanced;
- (e) the date of repayment of the total amount deposited in their account to the fund account;
- (f) a clause to commit the financial institution to the loan conditions, limits and interest rates set by the fund;
- (g) undertaking by the financial institution to guarantee the loans made and to reimburse the fund in the event of default;
- (h) undertaking to insure the total amounts disbursed to its account by the fund against all risks; and
- (i) termination and consequences of termination.

(3) For purposes of this section, a financial institution shall have the same definition as ascribed in the Central Bank Act.

(4) A financial institution appointed under sub-section (1) shall only disburse funds within guidelines agreed upon in writing with the fund committee.

25. (1) The following interest rates shall be applicable for the specific loan products—

Approved
interest rates

- (a) not more than six per cent per annum for start- up capital loans
- (b) not more than eight per cent per annum for business support for micro and existing business; and

- (c) not more than eight per cent per annum for tender award financing.

(2) The Memorandum of Understanding executed under this section shall, in addition to any other requirements, prescribe the share of the interest which the financial and semi-financial institutions shall to deposited to the fund account.

(3) Notwithstanding the provisions of sub-section (1), the Fund Committee may by notice through the Executive Member issue guidelines prescribing the loan limits, interest rates and repayment conditions.

26. (1) A loan shall not be utilized for any other purpose other than the purpose for which it was approved.

Utilization of the
loan

(2) Where a person utilizes the loan contrary to the purposes for which the loan was approved, the Fund Management Committee may disqualify a person from accessing a further loan from Fund monies.

(3) Where a financial institution or semi financial institution utilizes or disburses loans contrary to the provisions of this Act and the Memorandum of Understanding, the Fund Committee may with or without notice revoke the memorandum of understanding and in every such case, the financial institution shall be required to pay back all the monies advanced within the period specified in the Memorandum of Understanding.

27. The Fund Committee administering the fund shall refer the name of any defaulter to the Credit Reference Bureau.

Actions against
defaulters

PART IV – FINANCIAL PROVISIONS

28. (1) The Fund Committee shall be notified by the Executive Member responsible for finance prepare or cause to be prepare the estimates of the revenue and expenditure of the Fund for that financial year.

Annual estimates

(2) Upon approval of the estimates by the County Assembly, all monies appropriated for purposes of the Fund shall be paid into the Fund's account.

29. (1) The Fund shall, within three months after the end of the financial year, submit to the County Executive Committee a report of the operations of the Fund, the yearly

Annual report
and publication

balance sheet and such other statements of accounts as the County Executive Committee may require.

(2) The Executive Member shall lay before the County Assembly the reports, balance sheet and statements submitted under this section in the sitting within the four months after the end of the financial year.

(3) The Executive Member may publish the balance sheet, statements and reports submitted under this section within the County Government communication channels, including the County Government website.

PART V-GENERAL PROVISIONS

30. (1) In addition to any other remedy under this Act or any other written laws, an applicant who gives false or misleading statements in respect of the loan application or utilization of the loan, whether orally or in writing, commits an offence under this Act and on conviction is liable to a fine not exceeding twenty thousand shilling.

Offences

(2) A person who disburses loan contrary to the provisions of this Act or the memorandum of understating contrary to this Act commits an offence and on conviction shall be liable to a fine of a sum not exceeding five hundred thousand or to imprisonment for a term not exceeding six months or to both.

(3) A person who utilizes or authorizes the utilization of the Fund other than in accordance with this Act commits an offence and on conviction, shall be liable to a fine of a sum not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(4) The provisions of this section shall not be construed as barring the County Government from applying any other remedy under any other written law.

31. (1) Subject to the provision of the Public Finance Management Act, the Executive Member may make regulations generally for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to subsection (1), regulations may prescribe the—

- (a) procedure and criteria for accessing a loan from the Fund;

- (b) loan repayment conditions, interest or penalties applicable including the procedure for management of defaulters.
- (c) loan limits; and
- (d) criteria for appointment of a financial institution or semi- financial institution .

(2) Pursuant to Article 94 (6) of the Constitution, the legislative authority delegated to the Executive Member in this section shall be exercised only for the purpose and intent specified in this section and in accordance with the principles and standards set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

Cap. 2
No.23 of 2013

32. A person who is aggrieved by a decision of the Fund Management may appeal within thirty days from the date the decision was made.

Appeal

MEMORANDUM OF OBJECTS OF REASONS

This Bill establishes a fund for purposes of financing start up and existing businesses, including agri-business, the micro- and small enterprises business sector. The fund is for granting business loans to youth, women, persons with disabilities and vulnerable persons.

PART I of the Bill deals with preliminary matters. The Part sets out the objects of the Act and the guiding principles.

PART II of the Bill established the Bomet Enterprise Development Fund. This Part defines the sources of money for this Fund to include the County Assembly appropriations, interests earned from the Fund and any other legal sources. The Part also establishes a bank accounts for the Fund and defines the authorized signatories. The Part also set out the categories of loans which can be granted under the fund, which includes the capital start –up loan, business financing for existing business, Local purchase order and local supply order financing, asset financing and agri-business financing.

PART III of the Bill provides for the administration structure of the fund. The Part sets out the roles of the Executive Member and the reporting responsibility to the County Assembly. The Part creates a Directorate of Enterprise Development Fund and defines its functions. The Part also allows for the designation of the Fund Committee administering the fund, who will be appointed in accordance with the provisions of the Public Finance Management Act. The Part recognizes that there will be need for recruitment and deployment of staff for better implementation of the Act.

It sets out the application procedure, conditions and utilization of the loan. The application process allows for appointment of financial institution, that is to say the banks, and utilization of semi-financial institutions, registered groups and entities such as sacco in managing fund monies, receiving and evaluating applications, managing the disbursement and collection of guaranteeing the loans made from fund monies.

The Part also gives the Fund Committee the power to set the loan limits, interest rates, penalties for defaults payments as well as conditions for repayment of the loans subject to the County Executive Committee's approval. The part also guides successful applicants on the manner of utilization of the loan.

PART IV of the Bill provides for financial provisions, budgeting and auditing of the Fund.

PART V provides for the general provisions. It set out an offence for giving false or misleading information in order to influence the decision on the loan application. The Act also creates an offence for disbursing loans contrary to this Act. The part also set out the power to make regulations. It provides for appeals through the Executive Member.

DAVID MARITIM,
Chairman, Committee on Trade

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