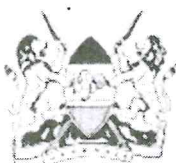


SPECIAL ISSUE

Kenya Gazette Supplement No. 8 (Migori County Acts No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MIGORI COUNTY ACTS, 2021

NAIROBI, 5th May, 2021

CONTENT

Act—

PAGE

The Migori County Sweet Potatoes Processing Plant Corporation Act, 20211

**THE MIGORI COUNTY SWEET POTATO PROCESSING PLANT
CORPORATION ACT, 2021**

No. 2 of 2021

Date of Assent: 19th April, 2021

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Object of the Act.

**PART II—ESTABLISHMENT OF THE MIGORI COUNTY
SWEET POTATO CORPORATION**

- 4—Establishment of the Corporation.
- 5—Composition of the Corporation.
- 6—Qualification for appointment of Chairperson.
- 7—Resignation of members of the Board.
- 8—Vacancy in the office of Chairperson.
- 9—Removal from Office.
- 10—Procedure and meetings of the Corporation.
- 11—Managing Director of the Corporation.
- 12—Removal from office of the Managing Director.
- 13—Staff of the Corporation.
- 14—Seal of the Corporation.
- 15—Protection from liability.
- 16—Code of conduct.
- 17—Conflict of interest.
- 18—Records of the Corporation.
- 19—Powers of the Corporation.
- 20—Exclusive privileges of the corporation.
- 21—Restrictions on purchase of fresh products.

No. 2 *Migori County Sweet Potato Processing Plant Corporation* **2021**

22—Agricultural Corporation Fund.

23—Administrator of the Fund.

24—Initial capital of the Corporation.

25—Objective of the Fund.

PART III—FINANCIAL PROVISIONS

26—Banking accounts, Reserve and Stabilization Funds.

27—Surplus/profits.

28—Accounts.

29—Audit.

30—Powers of the County Auditor and National Auditor-General.

31—Annual report to County Executive Committee Member.

32—Corporation to comply with County Executive Committee Member's Direction.

33—Acquisition of scheduled undertaking.

34—Matters to be taken into account in determining compensation.

PART IV—MISCELLANEOUS PROVISIONS

35—Matters to be neglected in determining compensation.

36—Vesting.

37—Compensation to offers of scheduled undertakings.

38—Rules for good governance.

39—Regulations.

40—Cess.

41—Penalty.

THE MIGORI COUNTY SWEET POTATO PROCESSING PLANT CORPORATION ACT, 2021

AN ACT of the county Assembly of Migori to establish Migori County sweet potato processing plant Corporation; to provide for the institutional framework for the regulation, growth and development of sweet potatoes in Migori County and for connected purposes

ENACTED by the County Assembly of Migori. as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Migori County Sweet Potatoes Processing Plant Corporation Act, 2021 and shall come into operation upon publication in the *Gazette*.

Interpretation.

2. In this Act—

“auditor-general” means the holder of that office as created by the Constitution of Kenya, 2010;

“auditor” means auditor appointed by the Board;

“Board” means the board of the corporation established under section 4;

“cess” means tax payable for sale or processing of the sweet potato as recommended by the board;

“Corporation” means the Migori County sweet potatoes processing plant Corporation established by section 4 of the Act;

“County Executive Committee Member” means the county executive committee member in-charge of County Agriculture sector;

“*ex-officio* member” means members with no voting rights;

“farmer” means the farmer growing the sweet potato variety as prescribed in the Act;

“local varieties” means indigenous sweet potato varieties;

“permit” means a written authority from the corporation for the sale of fresh sweet potato;

“scheduled undertaken” means planned activities;

“special meeting” means an ad hoc meeting;

No. 2 *Migori County Sweet Potato Processing Plant Corporation* **2021**

“sweet potato stakeholder” means any person involved in sweet potato value chain;

“sweet potato” means selected sweet potato variety; and

“Technical department” means department of agriculture.

Object of the Act

3. The object of this Act is to—

- (a) establish Migori County sweet potatoes processing plant Corporation for the purpose of promoting the value addition of selected varieties of sweet potatoes for local consumption and export;
- (b) to promote development of county agricultural sector by providing a ready market for sweet potato for increased income;
- (c) create employment;
- (d) generate revenue for the county government;
- (e) to provide high quality value added products of sweet potato to consumers; and
- (f) to provide highly nutritive products to reduce malnutrition among children below five years.

Establishment of the corporation

4. (1) There’s established the Migori County sweet potatoes processing Plant Corporation.

(2) The Corporation shall be a body corporate having perpetual succession and a common seal, and shall have all the powers conferred by this Act.

(3) The seal of the Corporation shall be authenticated by the signature of the Chairperson, or one member of the Corporation authorized to Act on behalf and the Secretary of the Corporation. and such seal shall be officially and judicially noticed.

(4) All documents, other than those required by law to be under seal, made by, and all decisions of, the Corporation may be signified under the hand of the Chairperson, any member of the Corporation authorized on behalf of the secretary of the Corporation.

(5) The Corporation may sue and be sued in its corporate name, and may for all purposes be described by such name.

Composition of the Corporation.

5. (1) The Corporation shall comprise of—
- (a) a Chairperson appointed by the Governor;
 - (b) each sub county will nominate one farmer representative from which two members will be appointed by the county executive committee member for Agriculture to represent farmers;
 - (c) three members appointed by the county executive committee member for Agriculture from the technical department;
 - (d) two members, being one man and one woman, nominated by sweet potato stake holders will be appointed by the County Executive Committee Member for Agriculture to represent sweet potato stake holders;
 - (e) one member appointed by the County Executive Committee Member for Trade, Tourism and Co-operatives to represent interest of cooperative;
 - (f) the chief officer to the county Treasury or their representative appointed in writing;
 - (g) the chief officer to the department of Agriculture or their representative appointed in writing; and
 - (h) the managing director who shall be secretary to the Board.
- (2) Three members of the Corporation, other than ex officio members, shall retire after three (3) years in rotation, but shall be eligible for reappointment.

(3) The members to retire as aforesaid shall be those who have been continuously longest in office, and, as between members who have been continuously in office for an equal period, the order of retirement shall, in default of agreement between them, be determined by casting lots.

Qualification for appointment of Chairperson

6. A person shall be qualified for appointment as Chairperson of the Corporation if that person—
- (a) holds a first degree in social science;
 - (b) has at least ten years experience in labour relations, five of which must be in management; and
 - (c) Meets the requirements of Chapter Six of the Constitution.

Resignation of members of the Board

7. Any member of the Corporation, other than an ex officio member, may at any time resign his/ her office by notice in writing addressed to the Chairperson, who shall forthwith cause it to be forwarded to the County executive member for Agriculture, and from the date of receipt of such notice by the Chairperson such member shall cease to be a member of the Corporation.

Vacancy in the office of the Board of the corporation

8. (1) The office of a Chairperson of the Corporation shall be vacated where the Chairperson—

- (a) dies;
- (b) is adjudged bankrupt;
- (c) is absent from office without leave for more than three months, or is absent without leave from three consecutive meetings of the Corporation;
- (d) resigns;
- (e) becomes physically or mentally incapable of performing his/ her duties;
- (f) is concerned in, or participates in the profits of any work done for the Corporation otherwise than as a member of the Corporation.

(2) The provisions of sub-section (1) shall not apply to any work done by the Corporation which is entered into or done in the ordinary course of the business of the Corporation and in which the member receives no preferential treatment over or more advantageous terms than other members of the public.

(3) The county executive member for agriculture may appoint any person temporarily in the place of the Chairperson or any other member of the Corporation in case of the temporary absence or inability of the Chairperson or other member for a period not exceeding three months.

(4) Subject to sub-section 3, members of the Corporation other than ex officio members may be paid out of the funds of the Corporation such remuneration for their services as may from time to time be authorized by the Cabinet, and all members of the Corporation may be paid out of such funds their reasonable expenses for travelling and subsistence while engaged upon the business of the Corporation.

(5) The appointment and resignation of any member of the Corporation shall be notified in the *Gazette*.

Removal from Office

9. (1) A person desiring the removal of chairperson or a member on any ground specified in section 8 (1) may present a complaint to the County Executive Committee Member setting out the alleged facts constituting that ground.

(2) The County Executive Committee Member shall consider the complaint and, if satisfied that it discloses a ground under section 8 (1), shall—

- (a) constitute a team from the membership of the Corporation to investigate the matter expeditiously;
- (b) the team constituted shall report on the facts; and
- (c) make its recommendation to the County Executive Committee Member.

(3) Where the team finds that there is no case to answer, it shall dismiss the petition and inform the petitioner in writing the grounds for dismissal.

(4) The County Executive Committee Member shall, within twenty-one days of receipt of the recommendation under subsection, (2) act in accordance with the recommendation.

(5) (a) in the case of removal of Chairperson from office, the County Executive Committee Member shall advise the Governor within twenty-one days of the recommendation under sub-section (2).

(b) The County Executive Committee Member or Governor may adopt, partially or wholly or reject the recommendations made under subsection (2) and where the recommendations are rejected or partially adopted, the County Executive Committee Member shall give reasons for such rejection or partial adoption.

Procedure and meetings of the Corporation

10. (1) The Corporation shall meet at such times as may be necessary or expedient for the transaction of the business of the Corporation, and such meetings shall be held within the county and time and on such days as the Corporation may determine.

(2) The Chairperson may at any time call a special meeting of the Corporation, and shall call a special meeting within fourteen days of a requisition for that purpose addressed to him by any member of the Corporation.

No. 2 *Migori County Sweet Potato Processing Plant Corporation* **2021**

(3) The Chairperson shall preside at all meetings of the Corporation at which he/she is present, and in case of his temporary absence the members present and constituting a quorum shall elect a Chairperson from among their number.

(4) The quorum of the Corporation shall be seven, of whom one shall be a member appointed under paragraph (b) of subsection (1) of section 4, one a member appointed under paragraph (c) of that subsection:

Provided that, if in relation to any meeting called to be held in accordance with the provisions of this section, there is no quorum by reason of the Act that three (2) members appointed under those paragraphs are not present, the meeting shall be adjourned to some other date appointed by the Chairperson of which due notice shall be given to all the members, and at such adjourned meeting of the Corporation any seven (7) members shall form a quorum.

(5) The decisions of the Corporation shall be by a majority votes.

(6) Minutes in proper form of each meeting of the Corporation shall be kept by the secretary, and shall be confirmed by the Chairperson at the next succeeding meeting.

(7) The powers of the Corporation shall not be affected by any vacancy in the membership thereof, nor by the act that it is afterwards discovered that there was some defect in the appointment or qualifications of a person purporting to be a member of the Corporation.

(8) Subject to this section, the Corporation shall have power to regulate its own proceedings, and may delegate to any committee of the Corporation the power and authority to carry out on behalf of the Corporation such duties as may be determined.

(9) The Chairperson of the Corporation may at any time and place convene a meeting of any committee to which any duties of the Corporation have been delegated under sub-section (8).

(10) The procedure at meetings of any committee of the Corporation shall be as nearly as may be the same as the procedure at meetings of the Corporation, and a quorum at any meetings of any committee shall be two-thirds of the members thereof.

Managing Director of the Corporation

11. (1) The Corporation shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Managing Director to the Corporation.

(2) A person shall be qualified for appointment as the Managing Director to the Corporation if the person—

- (a) is a citizen of Kenya;
- (b) holds a postgraduate degree from a university recognized in Kenya;
- (c) has had at least ten years proven experience at management level;
- (d) has experience in any of the following fields—
 - (i) labour matters;
 - (ii) ethics and governance;
 - (iii) law;
 - (iv) economics;
 - (v) social studies;
 - (vi) research;
 - (vii) corporate governance; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Managing Director shall serve on such terms and conditions as the Corporation may determine.

(4) The Secretary shall hold office for a term of five years but may be eligible for reappointment.

(5) The Secretary shall, in the performance of the functions and duties of office, be responsible to the Corporation.

(6) The secretary shall—

- (a) be the Chief Executive Officer of the Corporation;
- (b) be the accounting officer of the Corporation;
- (c) be responsible for—
 - (i) carrying into effect the decisions of the Corporation;
 - (ii) day-to-day administration and management of the affairs of the Corporation;
 - (iii) supervision of the staff of the Corporation; and
 - (iv) perform such other duties as may be assigned by the Corporation.

Removal from office of the Managing Director

12. (1) The Managing Director may be removed from office by the Corporation in accordance with the terms and conditions of service, for—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution and any other written law;
- (e) any other grounds specified in terms and conditions of service of secretary.

(2) Where the question of removal of the Managing Director under subsection (1) arises, the Corporation shall—

- (a) inform the secretary in writing of the reasons for intended removal; and
- (b) give the Managing Director the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

Staff of the Corporation

13. (1) The Corporation may employ such officers and servants as it may deem requisite, and may dismiss any officer or servant so employed as per the existing labour laws.

(2) The Corporation shall pay to any person in its employ such salary, wages or other remuneration and may pay bonuses and the like to any such person, and shall grant to any such person such leave as it may think fit, and shall establish and make contributions to a pension or superannuation fund and a medical aid fund for its employees subject to salary and remuneration commission guidelines and labour laws.

Seal of the Corporation

14. (1) The seal of the Corporation shall be such device as may be determined by the Corporation and shall be kept by the Managing Director.

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorized in that behalf by resolution of the Corporation.

(3) Any document purporting to be under the seal of the Corporation or issued on behalf of the Corporation shall be admissible in evidence in

the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof.

Protection from liability

15. Nothing done by a member of the Corporation or by any person working under the instructions of the Corporation shall, if done in good faith for the purpose of executing the powers, functions or duties of the Corporation under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Code of conduct

16. The members and the employees of the Corporation shall subscribe to the code of conduct as set out by the Corporation.

Conflict of interest

17. (1) If any person is present at a meeting of the Corporation or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting declare such interest and shall not, unless the Corporation or committee otherwise directs, take part in any consideration or discussion of, or vote on any question connected to such matter.

(2) The disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

(3) The chairperson, member, or staff of the Corporation shall not transact any business or trade with the Corporation.

(4) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Records of the Corporation

18. The Corporation shall keep a record of the proceedings of every meeting of the Corporation.

Powers of the Corporation

19. (1) In addition to any other powers conferred by this Act, the Corporation shall have power—

- (a) to acquire, erect, construct, establish, modify and maintain the plant, water works and cold storage concerns, and to operate the same for the purpose of value addition and processing by-

No. 2 *Migori County Sweet Potato Processing Plant Corporation* 2021

products freezing, canning and safe storing of products, whether for export or local consumption;

- (b) to carry on the business on a wholesale basis of sweet potato products, dealers and merchants in agriculture and the fresh products, and to enter into any contracts for the purchase, sale and supply of, and to purchase, sale and supply, any such things as aforesaid:

Provided that the Corporation in carrying on the business of wholesale basis may not sell sweet potato products except to—

- (i) a retailer for the purpose of resale; or
 - (ii) a hospital, hotel, boarding-house, restaurant, school or club; or
 - (iii) a person buying in quantities of not less than one hundred kilo grams:
- (c) to carry on the business of exporters of fresh sweet potatoes and export any processed sweet potato product whether in a frozen state or otherwise;
 - (d) to make contracts and give and enter into surety or guarantees in connection with any part or portion of the business or objects of the Corporation, and to modify or rescind the same;
 - (e) to enter into, renew, cancel or abandon any arrangements with any government or authority, local or otherwise, that may seem conducive to the Corporations' objects, and to obtain from any such government or authority any rights, privileges and concessions which the Corporations may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
 - (f) to purchase, take on lease or in exchange, hire or otherwise acquire any property, movable or immovable, and any rights or privileges which the Corporation may think necessary or convenient;
 - (g) subject to the approval of the Board to invest and deal with any moneys of the Corporation not immediately required by the Corporation in and upon such investments and securities as are allowed by law for the investment of trust funds and in such manner as the Corporation may think fit, and from time to time to vary or realize such investments;

- (h) with the prior approval of the board, to raise moneys by way of loan in such amounts, by such methods and for such purposes as the Governor may approve, and to redeem the same thereafter it shall be approved by the County Assembly;
- (i) to draw, accept, endorse, discount, execute and issue Acts of exchange, promissory notes, Acts of lending, warrants and other negotiable or transferable instruments or securities;
- (j) to construct, maintain, alter and improve any building, work, machinery and plant necessary or convenient for the purpose of its business;
- (k) to carry on the business of warehousing, and to acquire or construct bonded or other warehouse or stores, and to control, work, manage, let or dispose of the same or any part thereof;
- (l) to work or otherwise beneficially use, and with the sanction of the County executive committee member to exchange, let, sell or hypothecate, any of the property, rights, privileges, machinery or plant of the Corporation acquired or constructed for use in connection with the powers hereby conferred;
- (m) subject to the approval by the County executive committee member and to such terms and conditions as the County executive committee member may impose, to sell, transfer or make over the property and undertaking of the Corporation to any public company limited by shares formed under the Companies Act (Cap. 486) or to any other company or corporation or society formed under the Co-operative Societies Act (Cap. 490) or any other Act for the purpose of taking over the property and undertaking of the Corporation;
- (n) with the consent of the Governor upon shall be approved by the County Assembly and subject to such conditions as the Governor may impose, to borrow money by the issue of shares, stock, debentures or debenture stock, in the manner hereinafter provided, for all or any of the following purposes—
 - (i) the repayment of loans raised under the powers conferred by paragraph (h) of this subsection or of county Treasury advances obtained under section 12 of this Act, or of both such loans and advances;
 - (ii) the provision of working capital or additional working capital;

No. 2 *Migori County Sweet Potato Processing Plant Corporation* 2021

- (iii) the redemption of any shares, stock, debentures or debenture stock which the Corporation is required or enabled to redeem;
- (iv) any other expenditure properly chargeable to capital account;
- (o) with the consent of the Governor upon approval by the County Assembly, to create and issue shares, stock, debentures or debenture stock (whether non-interest bearing or otherwise) for the purpose of enabling the Corporation to raise any money which it is empowered under this Act to borrow by the issue of shares, stock, debentures or debenture stock, and to charge such shares, stock, debentures or debenture stock and the interest thereon on the undertaking and revenues and the whole or any specified part of the property excise or enjoyment of the rights, interests and powers conferred upon it by this Act.

(2) Every decision or Action made or taken by the Corporation in the exercise of the powers conferred upon it by this Act which relates to either of the following matters shall only be made or taken subject to the approval of the County executive committee member —

- (a) the construction or acquisition of any major buildings, works, machinery or plant;
- (b) the extension of its business into any new area or any new undertaking.

(3) The prices to be paid by the corporation for, the produce purchased by the Corporation on a wet weight basis, shall be such as may from time to time be fixed or agreed under section 8 of the Agriculture Act (Cap. 318) and the method of disposal of puree and other production at wholesale basis shall be by direct sale at such prices as may from time to time be fixed by the county executive committee member on the advice of the corporation.

(4) The corporation may from time-to-time delegate to its managing director, either generally or specifically, such powers as to it may deem necessary or convenient.

(5) The dividends or interest payable on any shares, stock, debentures or debenture stock issued pursuant to paragraph (o) of subsection (1) shall be at such rate as the Board may specify.

Exclusive privileges of the corporation

20. (1) Subject to this section, the Corporation shall have the right to purchase sweet potatoes and to retain, sell or otherwise deal with any products derived from sweet potatoes and any other produce.

(2) Notwithstanding subsection (1), the Corporation and any person specifically authorized on behalf of the Corporation or by the County executive committee member may, by a permit in writing, authorize any person to exercise any of the powers conferred on the Corporation by subsection (1) subject to such terms and conditions as may be specified in such permit.

(3) Nothing in this section shall apply to local varieties of the sweet potatoes.

(4) No person shall be entitled to compensation or damages by reason of any prohibition contained in, or other matter or thing arising under, this section

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Restrictions on purchase of fresh products

21. (1) No person from within or without the county, other than the Corporation, shall purchase the fresh products of sweet potato from contracted farmers except to—

(a) a person in possession of a permit in writing from the Corporation authorizing the sale or purchase of such fresh products.

(b) a person prequalified by the Corporation authorizing the sale or purchase of such fresh products at a predetermined price.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

(3) No person shall be entitled to compensation or damages by reason of any prohibition contained in, or other matter or thing arising under, this section.

(4) In this section, “fresh products” does not include the local varieties.

Agricultural Corporation Fund

22. (1) There is established the Agricultural Corporation Development Fund.

(2) The Fund shall consist of—

No. 2 *Migori County Sweet Potato Processing Plant Corporation* **2021**

- (a) consolidated fund appropriated by the County Assembly for purposes of which the Fund is established;
- (b) income from any investment made by the Fund as Appropriation in Aid or revolving funds;
- (c) donor Agency Projects or program funds from Bilateral or Multilateral organization project initiative funds;
- (d) gifts, donations, grants and endowments made to the Fund from any lawful source; and
- (e) monies from any other lawful source approved by the Board of management.

(3) There shall be paid out of the Fund, any expenditure approved by the Board pursuant to sections of this Act.

Administrator of the Fund

23. The Director of the Corporation shall administer the Fund.

Initial capital of the Corporation

24. (1) The Corporation shall obtain by way of advance from the county Treasury at least KSh. 50,000,000, (Kenya Shillings Fifty million) and the Treasury may out of moneys voted by county assembly for the purpose advance to the Corporation, moneys sufficient to enable the Corporation to carry out any of its powers, duties and functions.

(2) The moneys so advanced and the interest thereon shall be a liability of the Corporation, and shall be a first charge on the property, assets, revenues and sinking, reserve and stabilization funds of the Corporation, or of such part thereof as is hypothecated to secure such advance (but not upon the property and assets of any pension, superannuation or medical aid fund created under section 6, and shall be repayable according to the terms of such advance provided that the County executive committee member for the time being responsible for Finance may by writing under his hand direct that any part of the property, assets, revenues and sinking, reserve and stabilization funds of the Corporation shall be released from any first charge imposed under this section to such an extent and in such a manner as he deems fit.

Objective of the Fund

25. The objective and purpose of the fund shall be to provide funds for development and running of the commercial enterprises at the corporation on a revolving basis. The ultimate goal of the fund is to make the corporation self-sustaining. The objectives include—

- (a) initial purchase of fresh sweet potato tubers through prequalified actors;
- (b) to maintain the plant and repair in case of break down;
- (c) replacement of obsolete equipment
- (d) additional Staff remuneration
- (e) provide quality training to the farmers for agricultural development;
- (f) promotion of sustainable land use and conservation of natural resources;
- (g) to provide improved germ plasma to sweet potato farmers in farmer field schools
- (h) promote value-addition and utilization of agricultural produce; and
- (i) promote commercialization of agricultural enterprises.

PART—FINANCIAL PROVISIONS

Banking accounts, Reserve and Stabilization Funds

26. (1) The Corporation shall open a banking account or banking accounts, into which all moneys received by the Corporation shall be paid in the first instance and out of which all payments made by the Corporation shall be made.

(2) The County Executive committee member in charge of Finance and Economic planning, with the approval of the County Assembly shall, establish a sink fund, a reserve fund or a stabilization fund or any or all such funds, and shall set aside annually towards such sink fund, reserve fund and stabilization fund such sums; not exceeding 60% of the surplus realized by the corporation or Kenya Shillings twenty Million (KSh. 20,000,000) or whichever is lower, which shall be apportioned as follows—

- (a) 20% -Sink fund;
- (b) 40% -reserve Fund 40%- Stabilization Fund as the County executive committee member shall annually approve.

(3) The sink fund shall be utilized for repayment of moneys borrowed by the Corporation.

(4) The reserve fund shall be utilized when required for the renewal of machinery and the replacement of obsolete machinery or plant, for the improvement of the plant owned by the Corporation or with the sanction of the cabinet members through the county executive member for

No. 2 *Migori County Sweet Potato Processing Plant Corporation* **2021**

agriculture for emergency, but shall not be utilized for ordinary maintenance or operating expenses.

(5) The stabilization fund shall be utilized by the Corporation for either or both of the following purposes—

- (a) to meet any losses due to decreased operations or temporary stoppage of work; or
- (b) to stabilize the price of sweet potatoes and other products dealt with by the Corporation.

Surplus/profits

27. (1) If in any year the operations of the Corporation result in a surplus after all expenses and charges have been met and provision for payment to the sinking, reserve and stabilization funds (if any) has been made, the Corporation may, with the approval of the County executive committee member, shall pay such part of the surplus as it thinks fit to the suppliers of sweet potatoes and other products supplied by them to the Corporation, or may, with the approval of the County executive committee member, apply a portion of such surplus to the general betterment of the agriculture industry

(2) Any surplus not disposed of under subsection (1) and not otherwise appropriated shall be carried forward in the revenue and expenditure account for appropriation in succeeding years.

Accounts

28. The Corporation shall cause to be kept proper books of account and other books in relation thereto and to all its undertakings, works and property, and shall prepare yearly balance sheets made up to the thirty-first day of December in each year, showing in detail the assets and liabilities, revenue and expenditure of the Corporation.

Audit

29. (1) The Board shall appoint one or more persons who publicly practice the profession of accountancy (hereinafter referred to as the auditors) to examine the accounts of the Corporation.

(2) The Corporation shall produce and lay before the auditors all books and accounts of the Corporation, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditors shall be entitled to require from all members and employees of the Corporation such information and explanation as may be necessary for the performance of their duties as auditors.

(3) The expenses of and incidental to the audit shall be borne and paid by the Corporation.

(4) In addition to the ordinary duties of auditors, it shall be the duty of the auditors to report not less than once in every year whether or not—

- (a) all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit were obtained;
- (b) all their requirements and recommendations as auditors have been complied with and carried out;
- (c) in their opinion, proper books of account have been kept by the Corporation, so far as appears from their examination of those books, and proper returns adequate for the purpose of their audit have been received from branches or agencies not visited by them;
- (d) the Corporation's balance sheet and (unless it is framed as a consolidated profit and loss account) the profit and loss account dealt with by the report are in agreement with the books of account and returns;
- (e) in their opinion, to the best of their information and according to the explanations given to them, the accounts give all necessary information and give a true and fair view—
 - (i) in the case of the balance sheet, of the state of the Corporation's affairs as at the end of its financial year;
 - (ii) in the case of the profit and loss account of the profit or loss for its financial year.

(5) A copy of every report made by the auditors shall be sent by the auditors to the Governor and county assembly and the auditors shall furnish the Governor and county assembly such further reports and such further information as he/ she may request.

Powers of the County Auditor and National Auditor-General

30. (1) The county auditor and national government Auditor-General may at any time examine the accounts of the Corporation.

(2) The Corporation shall produce and lay before the Auditors all books and accounts thereof and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from all members and employees of the Corporation such information and explanation as he may consider necessary.

Annual report to County Executive Committee Member

31. (1) The Corporation shall, on or before the thirty-first day of March in each year, furnish to the County executive committee member a report upon its work during the year ended the thirty first day of December last preceding, and such report shall include a balance sheet and a complete statement of revenue and expenditure duly audited, and the report of the auditors under section 16(4).

(2) Every report furnished under subsection (1) shall be laid by the County executive committee member before the county executive committee meeting chaired by the Governor and to thereafter to the county Assembly as soon as possible after it has been furnished to him and there after uploaded onto the county website.

Corporation to comply with County Executive Committee Member's Direction

32. In the exercise of its powers and in the performance of its functions under this Act, the Corporation shall comply in accordance with any general or special directions that may be given to it by the county executive committee member.

Acquisition of scheduled undertaking

33. (1) Within one month from the inclusion, pursuant to subsection 33 (5). of any undertaking in the Schedule, or within such extended time as the County executive committee member may in any particular case by writing under his/ her hand allow, a notice may be served on the Corporation by or on behalf of the owner or on behalf of any local authority operating a scheduled undertaking requiring the Corporation to acquire such scheduled undertaking and to pay compensation therefore, and thereupon the Corporation shall acquire the scheduled undertaking and pay compensation therefore as hereinafter provided.

(2) The amount of any compensation to be paid under subsection (1) shall, in default of agreement between the parties, be referred to the arbitration of three persons, one be nominated by each party to the reference and the third to be appointed by writing under the hand of the County executive committee member before the reference is proceeded with, and the decision of any two of the arbitrators shall be binding and the provisions of the Arbitration Act (Cap. 49) shall, where applicable apply.

(3) The compensation for any scheduled undertaking so acquire shall be the market value (ascertained as hereinafter provided) of the undertaking at the date when the undertaking was added to the Schedule t

this Act, together with compensation for loss of profits assessed on the basis of three times the average annual net profit of the scheduled undertaking.

(4) The average annual net profit of a scheduled undertaking shall be determined—

- (a) if the undertaking has been operating for five years or more, by ascertaining the sum of the Actual annual net profits of the scheduled undertaking over the five years immediately preceding the inclusion of the undertaking in the Schedule and dividing such sum by five; or
- (b) if the undertaking has been operating for less than five years, by ascertaining the sum of the Actual net profits for such number of years as the undertaking has been operating and dividing such sum by that number.

(5) Any person, not being the owner or operator of an undertaking, which is already included in the Schedule, who, at the commencement of this Act, is operating any cottage industry dealing with sweet potato processing, to which section 8 applies, and who—

- (a) is not granted a license under paragraph (a) of subsection (1) of that section; or
- (b) is dissatisfied with any condition attached to such license,

may apply to the County executive committee member to have his undertaking added to the Schedule, and the County executive committee member may grant or refuse such application and, if such application is granted, the County executive committee member may thereupon, by notification in the Gazette, add such undertaking to the Schedule, and such undertaking shall become a scheduled undertaking and subsections (1), (2), (3) and (4) of this section shall apply.

Matters to be taken into account in determining compensation

34. (1) In determining the amount of compensation to be awarded for any scheduled undertaking acquired under section 19, the arbitrators shall take into consideration the following matters and no others, namely—

- (a) the market value, at the date when the undertaking was added to the Schedule, of the land, buildings, plant, machinery, apparatus and equipment of the undertaking; and
- (b) loss of profits, ascertained and assessed in accordance with Section 18.

(2) In assessing the market value of the land and buildings, regard shall be made to the nature of the tenure and the title to the land occupied by the undertaking, and to any conditions, restrictions or stipulations affecting the user or the availability or continued availability of the land.

(3) In assessing the market value of the buildings, plant, machinery, apparatus and equipment, regard shall be had to the age, state of repair and condition thereof; and no claim by the scheduled undertaking based upon present day cost of replacement shall be entertained.

PART—MISCELLANEOUS PROVISIONS

Matters to be neglected in determining compensation

35. In determining the compensation to be paid for any scheduled undertaking, the arbitrators shall not take into consideration—

- (a) the degree of urgency that has led to the acquisition, or the fact, if such is the case, that the owners or operators of the undertaking have been forced to ask for the undertaking to be acquired by reason of any of the provisions of this Act or of any matter arising there under
- (b) the disinclination of the owner or operator to part with the undertaking
- (c) any damage sustained by the owner or operator or any person interested which, if caused by a private person, would not be a good cause of Action;
- (d) any damage to, or increase in the value of, the land likely to be caused by the use to which the land is to be put;
- (e) any outlay on, or improvements to, the land, buildings, plant, machinery, apparatus or equipment incurred or effected subsequently to the commencement of this Act, except outlay on necessary urgent repairs;
- (f) damage by reason of injurious affection of other property of the undertaker
- (g) any enhancement in value arising from any unlawful user of the premises; or
- (h) Any debts owing to or by, or the benefit or burden of any Act entered into by, or on behalf of, the undertaker.

Vesting

36. Upon such date as the County executive committee member may, by notification in the *Gazette*, appoint, any scheduled undertaking

named in such notification acquired under this Act, and the lands, buildings, plant, machinery, apparatus, equipment and appurtenances of such undertaking shall vest in the Corporation without any further transfer or assurance within six months:

Provided that nothing in this section shall operate to vest in the Corporation any debt owing to or by the undertaking or the benefit or burden of any Act entered into by, or on behalf of the undertaking.

Compensation to offers of scheduled undertakings

37. Upon any scheduled undertakings vesting in the Corporation, there shall be paid by the Corporation, in such cases and to such extent as may be agreed between the Corporation and owner or operator of the undertaking and the officer or employee concerned or as, failing such agreement, may be prescribed, compensation to officers and employees of any such undertaking who suffer loss of employment or diminution of emoluments, pension rights or gratuity rights or whose position is worsened in consequence of the vesting.

Rules for good governance

38. The Corporation may make rules for the good governance and conduct of the business of the Corporation, the appointment, pay, superannuation and conditions of service of its employees and any other matters necessary or convenient to be provided for carrying on its business.

Regulations

39. (1) The County executive committee member may, after consultation with the Corporation, make regulations generally for better carrying out the provisions of this Act, and such regulations may, without prejudice to the generality of the foregoing power—

(a) regulate the raising by the Corporation of capital by way of the issue of shares, stock, debentures or debenture stock and the terms of issue and redemption thereof

(b) prescribe anything which is required by this Act to be prescribed.

(2) The County executive committee member shall, after consultation with the Corporation, make regulations to provide for the grading of sweet potato.

Cess

40. (1) The County Executive Committee Member may from time to time, on the recommendation of the Corporation with approval of County

No. 2 *Migori County Sweet Potato Processing Plant Corporation* 2021

Assembly by notice in the *Gazette*, impose a cess on the sale or processing of the sweet potatoes, or on any other product.

(2) A cess imposed by notice under subsection (1) shall be at such rate, and shall be payable to the Corporation by such persons and at such times (being not earlier than one month after publication of the notice) and in such manner as is specified in the notice, and shall be recoverable by the Corporation as a civil debt due to it from the person by whom it is payable.

(3) Moneys received by the Corporation derived from any cess imposed under sub-section (1) shall be applied by the Corporation to such capital purposes in the interests of the agriculture industry as may be approved by the County executive committee member.

Penalty

41. (1) Any person guilty of an offence under this Act or any regulations made thereunder shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both and on a second or subsequent conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(2) Where any offence under this Act or any regulations made thereunder is committed by a company, firm or other association of individuals, every person who at the time of the offence was a director, manager, secretary or other similar officer of such company, firm or association, or who was at the time concerned in or purported to act in the management of its affairs, shall be severally liable to prosecution and punishment in like manner as if he/ she had himself/ herself committed the offence, unless he/ she proves that he/ she took all responsible steps to prevent its corporation .

(3) All offences under this Act and regulations made thereunder shall be cognizable to the police.