

SPECIAL ISSUE

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CONTENT

Act—	PAGE
The Nyeri County Enterprise Development Fund Act, 2015	1

**THE NYERI COUNTY ENTERPRISE DEVELOPMENT FUND
ACT, 2015**

No. 7 of 2015

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ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—ESTABLISHMENT OF THE FUND

3—Establishment of the Fund.

4—Object and purpose of the Fund.

PART III—ADMINISTRATION OF THE FUND

5—Administration of the Fund.

6—Establishment of the Committee.

7—Removal of committee members from office.

8—Enterprise development fund unit.

9—Director of the Unit.

10—vacancies of the office of Director.

11—Functions of the Unit.

12—Appointment of a financial institution.

PART IV — ACCESS AND UTILIZATION OF THE FUND

13 — Eligibility to access the Fund.

14 — Accessing the Fund.

15 — Loan Repayment.

16 — Utilization of the Loan.

17 — Business Development Services.

18 — Partnership.

19 — Annual Forum.

20 — Annual Report.

21 -- Winding up of the Fund.

PART V -- REPORTS AND AUDITING OF THE FUND

22 -- Annual Estimates.

23 -- Financial statements and audits.

24 -- Annual report and Publication.

PART VI -- MISCELLANEOUS PROVISIONS

25 -- Offences.

26 -- Regulations.

**THE NYERI COUNTY ENTERPRISE DEVELOPMENT FUND
ACT, 2015**

AN ACT of the County Assembly of Nyeri to provide for the establishment of the Nyeri County Enterprise Development Fund, for the promotion of enterprise development and for connected purposes

ENACTED by the County Assembly of Nyeri, as follows—

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the Nyeri County Enterprise Development Fund Act, 2015 and shall come into operation on such date as the County Executive Secretary shall *gazette*.

Interpretation

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

“Committee” means the Nyeri County Enterprise Development Fund Committee established under section 6 of this Act.

“The Executive Member” means the Nyeri County Executive Member for Trade;

“Fund” means the Nyeri County Enterprise Development Fund established under Section 3 of this Act;

“Fund Administrator” means the fund administrator appointed under Section 5;

“micro and small enterprises” means a firm, trade, service, industry or a business activity whose annual turnover does not exceed Kenya Shillings five hundred thousand.

PART II — ESTABLISHMENT OF THE FUND

Establishment of the Fund

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

(2) The Fund shall consist of—

- (a) such monies as shall be appropriated by the County Assembly;
- (b) such sums received as contributions, donations, gifts, grants or other endowments granted to the fund from any lawful source;
- (c) monies earned or arising from any investment of the Fund; and
- (d) such funds as may vest in or accrue to the fund.

(3) The balance of the Fund at the close of each financial year shall be retained in the Fund.

(4) The Fund shall be a successor to loan schemes established by the Local Authorities previously existing in the county as established under the Local Government Act Cap. 265.

purpose of the Fund

4. The purpose of the fund shall be—

- (a) to provide access to financing facilities including capital to micro and small enterprise businesses;
- (b) facilitate micro and small enterprises groups to develop linkages with large enterprises;
- (c) facilitate training, mentorship and provision of business development services to entrepreneurs;
- (d) facilitating technology acquisition, adoption and utilization by Micro and small enterprises.

Administrator of the Fund

5. (1) The fund administrator shall be appointed by County Executive Member for Finance in accordance with the Public Finance Management Act, 2012.

(2) The Fund Administrator shall—

- (a) supervise and control the administration of the Fund;
- (b) be the accounting officer of the fund;
- (c) prepare a budget and such plans for better administration of the fund to be approved by the committee;
- (d) impose conditions or restrictions on the use of any expenditure arising from the Fund;
- (e) cause to keep proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (f) prepare, sign and transmit to the Executive Member for onward transmission to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the fund in accordance with the Public Audit act, 2003 and in such details as the County Treasury may from time to time direct;
- (g) furnish such additional information.

Establishment of the Fund Committee

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

(2) The Functions of the Committee shall be—

- (a) advising the Executive Secretary on the appropriate guidelines and procedures for implementation of the Act and the better management of the Fund;
- (b) reviewing and considering the applications recommended by the Unit and approving disbursements for loans and utilization of the Fund;
- (c) preparing annual reports on the implementation of this Act; and;
- (d) carrying out any other functions as may be assigned by the Executive Secretary

(3) The Committee shall consist of—

- (a) the Chief Officer for trade or a representative appointed in writing;
- (b) the Head of Legal Services or a representative appointed in writing;
- (c) four persons, one of whom shall be chairperson of the Board, not being public officers, who shall be appointed by the Executive Secretary on the advise of the County Public Service Board through a competitive and transparent recruitment process; and
- (d) the Director appointed under section 14, who shall be the secretary to the Board.

(4) The committee members appointed under subsection 1 (c) shall hold office for a term of three years which shall be renewable for one further term.

Qualifications of the Committees Members

(5) A person shall not be eligible for appointment as the chairperson or a member under subsection(1) (a) and (i) unless the person –

- (a) holds a degree from a recognized university;
- (b) satisfies the requirements of Chapter six of the Constitution;
- (c) has at least five years experience in business, finance, enterprise, development, law, economics or related field.

(6) The appointments of the members under subsection1 (c) shall be by notice in the Kenya and Nyeri County *Gazettes*.

Removal from office

7. (1) A member of the committee may be removed from office only for—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of not less than imprisonment;
- (c) is absent without reasonable cause, from three consecutive meetings of the committee;
- (d) violation of the Constitution or any other law;
- (e) gross misconduct, whether in the performance of the members functions or otherwise;

Enterprise Development Fund Unit

8. There is established, within the county Department for matters relating to trade, a unit to be known as the County Enterprise Development Fund Unit.

Director of the Unit

9. (1) The Unit shall be headed by a Director who shall be appointed by the Executive Secretary with the approval of the County Public Service Board.

(2) A person shall be eligible for appointment of the office of director is he—

- (a) holds a degree form a university recognized in Kenya;
- (b) has at least seven years professional experience in the relevant field;
- (c) meets the requirements under Chapter 6 of the Constitution of Kenya.

(3) The appointment of the Director under subsection (1) shall be by a notice in the County Gazette for a term of three years and shall be eligible for re-appointment for a further one term.

Vacation of the Office of Director

10. The office of the Director shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) resigns in writing;

- (d) dies;
- (e) is removed from the office for –
 - (i) being unable to perform the functions of his office by reason of mental or physical incapacity;
 - (ii) failing to declare his interest in any matter being considered or to be considered by the Unit or the Committee;
 - (iii) fails to perform his or her duties in accordance with the terms and conditions of appointment.

Functions of the Unit

11. (1) The functions of the Unit are to—

- (a) administer the Fund;
- (b) provide technical, financial and legal support in the process of administration of the Fund;
- (c) conduct civic education to promote the awareness and understanding of the operations of the Fund amongst stakeholders;
- (d) provide capacity building to, and advise entrepreneurs within the County to ensure the effective use of the Funds borrowed under this Act;
- (e) conduct research and gap analysis to ensure continuous performance and improvement of the Fund;
- (f) maintain a record of all Fund documentation;
- (g) prepare financial accounts and an inventory of all monies allocated to the Fund.
- (g) assist the Executive Secretary in formulating Guidelines and standard documentation for the purposes of implementation of this Act;
- (h) carry out such other functions as shall be conferred on it by the Executive Secretary.

Appointment of a financial institution

12. The Executive Secretary may, appoint a financial institution to administer the Fund on behalf of the County Government for the purposes of loan applications, disbursements, repayments and recovery on such terms and conditions as may be agreed upon by the County Executive Secretary and the Financial institution.

PART IV — ACCESS AND UTILIZATION OF THE FUND

Eligibility to access the Fund

13. (1) For a person to be eligible for accessing a financial facility under this Act, the person must be operating a micro or small medium enterprise or intending to commence operating a business which is a micro or small medium enterprise within the County;

(2) An application for a loan facility shall be made by a registered entity.

(3) Notwithstanding the provisions of subsection (1), a person who does not qualify under the category stipulated under subsection (1) (a) may be eligible for accessing a loan facility under this Act, if the person is poor, operates a micro or small medium enterprise, or intends to commence operating a business which is micro or small medium enterprise and meets the prescribed position.

Accessing the Fund

14. (1) A person who qualifies for funding under section 12, may apply for a loan to the Unit in the prescribed form and in accordance with the prescribed conditions.

(2) An application for a loan may be made by a registered enterprise, an individual or a group of persons subject to the prescribed conditions.

(3) The Executive Secretary shall in consultation with the Committee prescribe the limits of amounts that can be disbursed as a loan to an applicant.

(4) The Committee may, where an applicant meets the prescribed conditions—

(a) approve the loan application; or

(b) reject the loan application and give reasons to the applicant.

(5) The committee may, approve or reject any loan application.

(6) Where an application has been rejected, the committee shall be required to give reasons for the rejection.

(7) Notwithstanding the provisions of subsection (2), a loan shall not be disbursed to an applicant unless the applicant has undergone through the prescribed training.

Loan Repayment

15. (1) The committee shall, in consultation with the Executive Secretary establish loan repayment conditions.

(2) The County Executive Secretary shall set the interest rates chargeable on a loan disbursed under this Act.

(3) In establishing the amount repayable by an applicant, the committee may charge a fee for insuring the loan subject to the approval by the County Executive Committee.

(4) Where an applicant granted a loan under this Act defaults on repayment, the committee or a financial institution appointed under this Act may adopt such loan recovery measures as may be prescribed.

Utilization of the Loan

16. (1) A loan granted under this Act shall only be utilized for financing an enterprise or business undertaking that was approved by the committee at the time of application for a loan.

(2) A person who utilizes the loan granted under this Act in non-enterprise or business undertaking may be disqualified from accessing any other loan under this Act and the Board may recall the loan disbursed.

(3) Notwithstanding subsection (1), a person may with the approval of the committee engage in any other enterprise or business other than the approved enterprise.

Business Development Services

17. (1) The committee shall, in collaboration with other relevant county government, the national government departments or the private sector, coordinate the provision of appropriate business development services to persons applying for loans under this Act.

(2) The committee may, subject to the approval by the Executive Secretary charge such fees as shall be necessary for services rendered.

Partnership

18. The committee may collaborate, consult or enter into partnership with other governments or private entity for the purposes of implementing this Act.

Annual Forum

19. (1) The Board shall in consultation with the Executive Secretary, convene annual forum for all beneficiaries and potential beneficiaries under this Act which may be held at the Ward, sub-county or county levels.

(2) the forum shall provide a platform for—

- (a) reviewing and evaluating the implementation of this Act;
- (b) providing learning opportunities for business or enterprises;
- (c) exposing beneficiaries under this Act to investors.

Annual Report

20. (1) The Committee shall prepare an annual report of the operations of the Fund which shall be submitted to the County Executive Committee.

(2) The report shall provide among others for—

- (a) performance of the Fund against the set targets;
- (b) types of business or enterprise funded under his Act which may be classified in relation to the wards, sub county and the county levels;
- (c) the number of beneficiaries as categories under this Act which may be classified in relation to the wards, sub county and the county levels;
- (d) the rate of repayment and default of loans disbursed and released reasons for either;
- (e) challenges faced in the implementation of this Act and mitigation measures taken;
- (f) the success rate of businesses or enterprise funded under this Act; and
- (g) any other matter that may be prescribed.

Winding up of the Fund

21. In the event of winding up of the Fund, the cash balances shall be transferred to the account designated by the County Treasury.

PART V — REPORTS AND AUDITING OF THE FUND

Annual Estimates

22. (1) At least three months before the commencement of each financial year the board shall prepare or cause to be prepared estimates of the revenue expenditure of the Fund for that Financial year.

(2) The financial estimates referred under subsection (1) shall—

- (a) differentiate between recurrent and disbursement expenditure; and
- (b) itemize every activity that the Board intends to undertake in respect of the Fund in the coming financial year under separate vote head.

Financial statements and audits

23. (1) The committee shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the County Executive Secretary may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared signed and forwarded to the Auditor-General—

- (a) a financial statement of the Fund; and
- (b) such other statements of accounts as the County Executive Secretary for Finance may approve.

Public Audit Act, 12 of 2003

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act.

(3) The County Assembly shall submit to the Auditor-General all books and accounts of the Committee, together with all vouchers in support thereof and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Authority such information and explanation as he may consider necessary for the performance of his Auditor-General.

(4) The expenses incurred in and incidental to the auditing shall be met by the Committee.

Annual report and Publication

24. (1) the Committee shall, within a period of three months after the end of the Financial year, submit to the Executive Secretary a report of the operations of the Fund and the Committee and the yearly balance sheet and such other statements of account as the Executive Secretary shall require, together with the Auditor-General's report.

(2) The committee shall if the Executive Secretary so requires publish the report, balance sheet and statements submitted under subsection (1) in such manner as the Executive Secretary may specify.

(3) The Executive Secretary shall lay before the county Assembly the reports, balance sheets and statements submitted under subsection (1) and such statements of accounts as may be approved within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of the next sitting.

PART VI – MISCELLANEOUS PROVISIONS

25. (1) An applicant who—

- (a) is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting a request for a loan; or
- (b) upon being granted a loan and is subsequently required to answer any questions, furnish any information or particulars or produce any document or paper relating to the loan amount and use thereof, neglects or fails to do so without reasonable cause or furnishes false information aimed at misleading the committee; commits an offence and is upon conviction liable to a fine not exceeding Fifty Thousand Shillings

Offences

26. (1) Subject to the provisions of the Public Finance Management Act, 2012 the Executive Secretary may, in consultation with the committee make regulations for the better carrying out of provisions of this Act.

Regulations

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

- (a) prescribe the criteria for accessing the Fund;
- (b) prescribe the conditions imposed on accessing and repayment of the loans;
- (c) prescribe the limits of amounts that can be disbursed as loan to an applicant;
- (d) prescribe loan recovery measures;
- (e) prescribe the training to be offered to persons applying for funding under this Act; or
- (f) prescribed forms.

(3) Pursuant to Article 94 (6) of the constitution, the legislative authority delegated to the Executive Secretary 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.

THE GOVERNOR
OF THE STATE OF NYERI

NYERI COUNTY

NYERI COUNTY
OFFICE
NYERI

REPUBLIC OF

NYERI COUNTY GAZETTE
STANDARD

NO. 1

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