

SPECIAL ISSUE

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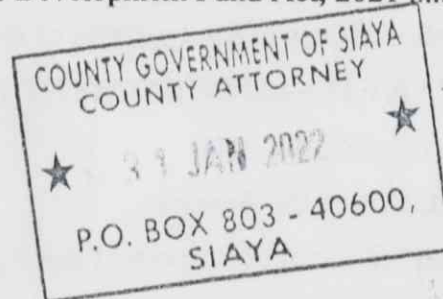
KENYA GAZETTE SUPPLEMENT

SIAYA COUNTY ACTS, 2021

NAIROBI, 22nd April, 2021

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**THE SIAYA COUNTY CO-OPERATIVE DEVELOPMENT FUND
ACT, 2021**

No. 1A of 2021

Date of Assent: 8th April, 2021

Date of Commencement: See Section 1

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SCHEDULE

**THE SIAYA COUNTY CO-OPERATIVE DEVELOPMENT FUND
ACT, 2021**

AN ACT of the County Assembly of Siaya to establish a Development Fund for the co-operative organizations in Siaya County by providing affordable loans to cooperative organizations that seek to promote the welfare and economic wellbeing of the people of Siaya County and for connected purposes

ENACTED by the County Assembly of Siaya, as follows—

PART I—PRELIMINARY

Citation and Commencement

1. This Act may be cited as the Siaya County Co-operative Development Fund Act, 2021 and shall come to operation on such date as the County Executive Committee Member, with the concurrence of the Governor, may appoint.

Interpretation

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

“Agency” means an entity appointed by the Executive Committee Member responsible for Finance and Planning to administer the Co-operative Development Fund on behalf of the County Government of Siaya.

“Applicant” means a co-operative organization operating in Siaya County and which has submitted a loan application form for consideration by the Committee. “Award” a ruling set by the arbitrator in a dispute under this Act

“Committee” means the co-operative development fund committee established under section 7 of this Act;

“Commissioner” means the Commissioner for Co-operative Development appointed under section 3 of the Co-operative Societies Act (Cap. 490) and includes any person on whom any of the powers of the Commissioner have been conferred;

“Co-operative Organization” means a registered Co-operative society Registered under (Cap. 490) of the laws of Kenya;

“County Executive Committee Member” means the member of the County Executive Committee responsible for the Co-operative Sub-Sector;

“Fund” means the Fund established under section 3;

“Fund Manager” means any person appointed by the County Executive Committee Member under section 116 of the Public Finance Management Act;

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2021

“Governor” means the Governor of Siaya County Government;

“Loanee” means a co-operative organization whose loan request has been approved and granted; under this Act;

“SASRA” means Sacco Societies Regulatory Authority.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the fund

3. (1) There is hereby established a Fund to be known as the Co-operative Development Fund.

(2) The Administrator of the Fund shall be appointed in accordance with the Public Finance Management Act, 2012, as prescribed in section 12 of this Act.

Objectives of the Fund

4. The objective and the purpose of the Fund shall be—

- (a) to provide funds to be used for granting low interest loans to cooperative institutions with a view to scaling up their lending activities, production, value addition, marketing of products and services both in the domestic and international market amongst other activities as may be prescribed;
- (b) for the attainment of the above objectives, the Committee may do acts and things that are permissible under this Act by doing all such other things as are incidental or consequential to the economic enhancement of the interests of co-operative organizations provided such act is approved by the County Executive member in charge of co-operative sub-Sector.

Guiding Principles of operating the Fund

5. In the exercise of the powers conferred under this Act, the committee shall be guided by the objects and principles of devolved governments as set out in Articles 174 and 175 of the Constitution of Kenya 2010 incorporating the following principles—

- (a) Public participation and financial inclusiveness;
- (b) Development partner’s linkages and participation;
- (c) Local ownership and sustainability;
- (d) Good Cooperative governance and accountability.

Revenue and expenditure of the Fund

6. (1) There shall be credited to the fund—

- (a) sums of money which may from time to time be voted by the County Assembly for that purpose;
 - (b) sums which represent the repayment of the capital and interest of any loan; granted from the Fund;
 - (c) income from any investment made by the Fund.
 - (d) any sums of money borrowed by the Fund with the approval of the County Assembly; and
 - (e) any gifts, donations, grants and endowments made to the Fund.
- (2) There shall be paid out of the Fund—
- (a) any expenditure approved by the Committee incurred in connection with the administration of the Fund pursuant to section 9 of this Act, provided that such expenditure does not exceed 5% per annum of funds appropriated by the County Assembly;
 - (b) the agency fee in accordance with the regulations to be promulgated under this Act;
 - (c) disbursement of loans pursuant to section 16 of this Act.

PART III—ESTABLISHMENT AND FUNCTIONS OF THE COMMITTEE

Establishment of the Co-operative Development Fund Committee

7. (1) There shall be established a committee to be known as the co-operative Development Fund Committee.
- (2) The Committee shall consist of—
- (a) the County Chief Officer in the County department for the time being responsible for matters relating to co-operative development or a representative appointed in writing; who shall be the Chairperson of the Committee;
 - (b) the County Chief Officer in the County department for the time being responsible for Finance and Economic Planning or a representative appointed in writing; who shall be the Treasurer of the Committee;
 - (c) the Head of legal services in the county or a representative appointed in writing;
 - (d) the County Director for Co-operative Development who shall be the Secretary to the Committee;

- (e) two representatives of opposite gender from co-operative societies one of whom shall be elected as the Vice-Chair of the Committee;
- (f) a representative of the Agency appointed under section 13, who shall be an ex officio member of the Committee. Provided that the representative shall be a senior Management officer of the agency.

(3) Members appointed under section 7(2)(e) shall serve for a period of three years and may be eligible for re-appointment only once.

Terms of Service of the members of the Committee

8. (1) The members of the Committee may be paid such allowances as the Member of the Executive Committee shall determine in consultation with the County Public Service Board.

(2) The Committee shall meet monthly provided that the meetings shall not exceed fifteen meetings in a year.

(3) Any other terms of service not indicated here shall be prescribed by the County public service board as need arises.

Functions of the Committee

9. The functions of the Committee are to—

- (a) provide capacity building to, and advise co-operative organizations to ensure the effective use of funds borrowed under this Act;
- (b) formulate policy guidelines on co-operative sector funding;
- (c) ensure that all projects/programs funded under this Act are consistent with the county's priorities specified in the relevant policy documents;
- (d) authorize allocations from the fund;
- (e) formulate or approve standards, guidelines and procedures for funding proposals under this Act;
- (f) provide oversight in the utilization of the Fund;
- (g) conduct research and gap analysis to ensure continuous performance improvement of the Fund;
- (h) assist co-operative organizations, where the Committee considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits; and
- (i) perform any other function as may be conferred on it by this Act or any other written law.

Delegation by the Committee

10. (1) The Committee may establish such sub-committee as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Committee may co-opt in to the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

(3) The Committee may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.

Conduct of affairs of the business of the committee

11. (1) Subject to subsection (2), the business and affairs of the Committee shall be conducted in accordance with the First Schedule.

(2) Except as provided in the schedule, the Committee may regulate its own procedure.

PART IV—APPOINTMENT OF THE AGENCY**Management of the Fund**

12. The Fund shall be managed by an Agency or a Fund Manager designated by the County Executive Committee Member for Finance in accordance with section 116(2) of the Public Finance Management Act.

Appointment of the Agency

13. There shall be an Agency appointed by the County Executive Committee Member responsible for Finance and Planning, who shall administer the Co-operative Development Fund on behalf of the County Government of Siaya under agreed terms of service in accordance with section 116 of the Public Finance Management Act, 2012.

Requirement for the appointment of the Agency

14. To be considered for appointment as the Fund's administrator, the Agency shall—

- (a) be Deposit taking Sacco licensed by SASRA with at least fifteen years' experience in Micro finance activities;
- (b) have a record of non-performing loans portfolio not exceeding 5%;

- (c) have an automated web based software system efficient in credit management among others;
- (d) have qualified staff with high performance records;
- (e) be tax, audit and annual returns compliant;
- (f) have a physical office in Siaya County or make arrangements to have a physical office in Siaya County within 3 months upon signing the contract.

Functions of the Agency

15 (1) The functions of the Agency are to—

- (a) administer the Fund established under section 3 of this Act;
- (b) receive all the loan application forms, do the requisite appraisals, and generate and approve proposals;
- (c) formulate and implement a loan recovery strategy that focuses on safety and efficacy;
- (d) disburse and recover loans that have been approved;
- (e) conduct civic education to promote the awareness and understanding of the Fund amongst stake holders;
- (f) develop frame work that will ensure an open, transparent and efficient use of funds borrowed under this Act in close liaison with the Committee;
- (g) provide technical, financial and legal expertise to the beneficiaries of the Fund;
- (h) maintain records of all documentation pertaining to loan application forms, loan appraisals, disbursements and recoveries; and avail quarterly reports of the same to the committee;
- (i) assist members of the committee in formulating guidelines and standard documentation required under this Act;
- (j) carry out such other function as may be conferred on it by the members of the executive committee under this Act.

(2) The Agency shall keep proper books of account i.e prepare financial accounts and an inventory of any monies allocated to it:

Provided that the Executive Committee Member shall reserve the right to inspect the Agency's records at any time upon giving notice the intension to do so.

(3) The agency shall be paid a fee in accordance with the Regulations to be promulgated under this Act.

PART V—FUNDING PROCEDURE

Administration of the Fund

16. (1) A Co-operative organization wishing to be considered for the grant of a loan shall make an application to the Committee in a prescribed form.

(2) A Co-operative Organization that has been awarded a loan will be issued with a Loan Identification Account Number by the Committee.

(3) The administration and Management of the fund shall be subject to the Public finance and management Act, 2012.

Conditions for granting of loan

17. (1) The Agency may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to a Co-operative organization and in so granting impose Conditions such as—
 - (i) have approved limit on external borrowing by the Commissioner and annual general meetings;
 - (ii) the amounts borrowed shall be in line with the provisions of Sec 35(1) of The Sacco Societies Regulations, 2010;
 - (iii) the applicant shall have complied with all SASRA requirements on Capital Adequacy, Liquidity and quality of loans;
 - (iv) the applicant shall provide proof of capacity to repay the loan through out its term period;
 - (v) demand security and require repayment in installments at such times and within such periods as the Agency deems fit,

Provided that and subject to the provisions of this section the Agency may upon the request by an applicant to whom a loan has been granted at any time vary—

- (a) The condition subject to which the loan was made—
 - (i) any security given in relation to the loan; or
 - (ii) any of the terms of repayment of the loan:

Provided also that the provisions of subsections (b)(ii) and (iii) above shall apply only with respect to Sacco's engaged in deposit-taking business in Siaya County.

(2) The grant of a loan by the Agency shall be preceded with due compliance of the conditions by the applicant and no loan shall be advanced or released to an applicant until the applicant shall have complied with all the conditions set by the Agency.

(3) Where a cooperative organization fails to comply with the conditions set by the Agency, the application shall be rejected forthwith. Provided that the applicant shall be notified in writing of the reasons for the rejection.

(4) Where in granting a loan the Agency considers it prudent to request for a guarantor to guarantee any loan granted to the cooperative organization in case of any default by a cooperative organization in the repayment of the loan, any guarantor who has guaranteed any such loan shall automatically and fully be liable to pay to the Agency all or any loan together with interest accrued and outstanding owed to the Agency by the loanee as shall be notified to the guarantor by the Agency.

Annual returns

18. (a) On the last day of each financial year the Agency shall send to all loanees an annual return form showing the status of the loan which every loanee shall be required to fill and submit to the Agency by 15th July every year;

(b) Agency shall be required to submit annual Returns to the committee in a prescribed manner within ten days upon receipt of returns from the loanees.

Loan Repayments

19. A loanee shall repay the borrowed sums and interest on such terms and conditions as may be prescribed.

PART VI—REPORTS AND AUDITS OF THE FUND**Annual Estimates**

20. (1) The Committee shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year at least three months before the commencement of each financial year.

(2) The financial estimates referred to in sub-section (1) shall—

- (a) itemize every activity that the Committee intends to undertake in respect of the Fund in the coming financial year under a separate vote head;
- (b) upon approval of the estimates by the County Assembly, all monies appropriated for the purposes of the Fund shall be paid into the Fund account established under this Act.

Financial Statements

21. (1) The Committee shall cause to be kept such books of accounts and other records in relation thereto of all its undertakings, funds, activities, and property as the County Executive member responsible for cooperatives 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.

(2) Financial statements of the Fund; and such other statement of accounts as the county executive committee members for Finance may approve.

Audit of the Fund

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

(2) The County Treasury shall submit to the Auditor-General all books of accounts of the Fund together with all vouchers in support thereof. The Auditor General shall be entitled to require from any member, officer, employee of the Fund such information and explanation as he may deem necessary for the performance of his duties as Auditor-General.

(3) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Fund.

Annual Report and Publication

23. (1) The Committee shall within a period of three months after the end of the financial year, submit to the County Executive Committee Member responsible for cooperatives a report of the operations of the Fund and the Committee during such year and the yearly balance sheet and such

other statement of accounts as the County Executive Committee Member responsible for cooperatives shall require.

(2) The Committee shall, if the County Executive Committee Member responsible for cooperatives so requires, publish the report, balance sheet and statements submitted under sub-section (1) in such a manner as the relevant County Executive Committee Member may specify.

(3) The County Executive Committee Member responsible for cooperatives shall lay before the County Assembly the reports, balance sheet and statements submitted under section (1) within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting

PART VII—SETTLEMENT OF DISPUTES

Disputes

24. (1) If any dispute concerning the business of this Fund arises—
- (a) among applicants, past applicants and persons claiming through applicants; or
 - (b) between applicants, past applicants and the Committee, member of the Committee or any officer of the Fund; or
 - (c) between the agency and the applicant, it shall be referred to the committee;
 - (d) between the committee and the agency that shall be referred to the County Executive Committee Member for the time being responsible for matters relating to co-operatives.
- (2) A dispute for the purpose of this section shall include—
- (a) a claim by the committee for any debt or demand due to it from an applicant or past applicant, or personal representative of a past applicant, whether such debt or demand is admitted or not; or
 - (b) a claim by an applicant, past applicant or personal representative of a past applicant for any debt or demand due from the committee, whether such debt or demand is admitted or not;

Arbitration

25. (1) A dispute within the meaning of section 24 above may be resolved through alternative dispute resolution mechanisms such as arbitration or any other traditional methods not repugnant to morality and justice.

(2) The County Executive Committee Member may appoint qualified persons to hear disputes using any of the methods referred to in (1) above.

Appeal in the High Court

26. The award of the arbitrator shall only be appealed in the High Court of Kenya whose decision shall be final.

Offences

27. (1) Where a guarantor who has been notified by the Agency under sub-section 17 (4) fails or refuses to pay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

(2) An official of a Co-operative organization who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in Writing relating to any matter affecting his request for a loan or
- (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
- (c) is granted a loan based on false information,

shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a fine of not exceeding one hundred thousand shillings or to imprisonment for a term of not more than six months or both and in the case of paragraph (c) to a fine not exceeding one million shillings or a term of imprisonment not exceeding three years.

(3) For any breach of this Act or lawful instructions issued by the Committee or failure to honor its obligations on time, the applicant maybe fined an amount not exceeding KSh. 200,000.00.

PART VII—MISCELLANEOUS PROVISIONS**General Provisions**

28. (1) If in the opinion of the Agency there has been or is likely to be any breach or failure to comply with any condition or term of repayment respecting a loan the Agency shall forthwith—

- (a) recover the loan from the cooperative organization as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;
- (b) enforce or realize any security relating thereto.

(2) The Agency may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

Financial reporting and audited Accounts

29. (1) A co-operative organization that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Agency.

(2) The beneficiary cooperative organization shall submit the duly audited financial accounts and any other information as may reasonably be required by the Agency within six months after the end of each financial year.

Powers to make Regulations

30. (1) The County Executive Committee Member shall in consultation with the Committee make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following—

- (a) Determination of committee member's allowances;
- (b) Requirements for appointment of non-public officers to the committee;
- (c) Terms of vacation of office for committee members;
- (d) Administration of the fund by the committee;
- (e) Competitive sourcing of the agency to administer the fund;
- (f) Guidelines for determination of agency fee;
- (g) Term of office for the Agency;
- (h) The rate of interest on loans to Co-operative Organizations from the Agency;
- (i) The rate of interest on Loans to members of co-operative societies from the Co-operative Organizations;
- (j) The receipt, processing and approval of applications for loans and the granting of loans to applicants;
- (k) The preparation & maintenance of loanees records already granted;
- (l) The withdrawal, recovery and cancellation of loan;
- (m) The setting up of procedures for dealing with loan defaulters;

(2) The regulations under the Act shall be approved by the County Executive Committee and the County Assembly before they take effect.

Winding up the Fund

31. In the event of winding up of the fund, the cash balances shall be transferred to the account designated by the County Treasury while other assets shall be transferred to the County Government.

SCHEDULE**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

1. (1) The Committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the Chairperson.

(2) The Committee shall have at least 12 meetings in every financial year and not more than 15 meetings.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Chairperson of the Committee.

(4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.

(5) Meetings shall be presided over by the chairperson or in his or her absence the Vice Chairperson or in the absence of both, a member elected by members'.

(6) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

Conflict of Interest

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which that matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Quorum

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.

(2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessarily to hold a meeting, the

Committee shall postpone the consideration of the matter in question until there is a quorum.

(3) Where persons present at the committee meeting do not constitute the quorum to hold a meeting even after two consecutive postponements, the meeting shall proceed.

Voting

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Rules and Procedure and Minutes

5. The Committee shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.