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No.... of 2018

Date of Assent: .....

Date of Commencement: .....

**A Bill to the County Assembly of Vihiga to establish a legal and institutional framework to provide access to affordable credit by Micro, Small, and Medium enterprise through establishment of the County Trade and Enterprise Fund.**

#### **PART I – PRELIMINARY**

- Short Title**            1 This proposed Bill may be cited as the Vihiga County Trade and Enterprise Fund Act, 2018 and shall come into operation on its publication in the Kenya Gazette.
- Interpretation**        2 In this Bill, unless the contents otherwise requires:-
- "Board"** means the county Trade and Enterprise Fund oversight body established under Section 6 of this Bill;
- "Board secretary"** means the person appointed Vihiga County Trade and Enterprise Fund Manager under Section 10 of this Bill;
- "County Trade and Enterprise Fund board"** means the Vihiga County Trade and Enterprise Fund Board established under Section 5 of this Bill;
- "Relevant County Executive Committee Member"** means the County Executive Committee Member for the time being responsible for matters relating to Trade, Tourism, Industrialization and Entrepreneurship;
- "Enterprise"** means an undertaking or a business concern whether formal or informal engaged in production of goods or provision of services;
- "Fund"** means the Vihiga County Trade and Enterprise Fund established under Section 4 of this Bill;
- "Group"** means an enterprise group registered under the Ministry of Labour, Social Security and Services or any other lawful registration body.
- "Chief Officer"** means the Chief Officer for the time being responsible for matters relating to Trade, Tourism,

Industrialization and Entrepreneurship;

**"Micro enterprise"** means a firm, business, service, industry or a business activity —

- a) whose annual turnover does not exceed five hundred thousand shillings;
- b) which employs up to five people; and
- c) whose total assets and financial investment shall be as determined by the Member of the Executive Committee from time to time, and includes —
  - i. The manufacturing sector, where the investment in plant and machinery or a registered capital of the enterprise does not exceed five million shillings;
  - ii. The service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed three million shillings;

**"Small Enterprise"** means a firm, business, service, industry or a business activity;

- a) Whose annual turnover ranges between five hundred thousand and five million shillings; and
- b) which employs less than ten people; and
- c) Whose total assets and financial investment shall be as determined by the Member of the Executive Committee from time to time, and includes —
  - i. The manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between five million and ten million shillings; and
  - ii. Service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between three and ten million shillings.

**Object and purpose of the fund**

- 3 The objects and purpose of this Bill is to provide a legal and institutional framework for the fund by —
  - a) Establish a legal and institutional framework to facilitate access to affordable credit by micro, small and medium enterprises;
  - b) Accessing to finance for promotion of innovative enterprises.
  - c) provide training, mentorship and provision of business development services to entrepreneurs;

**PART II—ESTABLISHMENT AND MANAGEMENT OF THE COUNTY  
TRADE AND ENTERPRISE FUND**

***Establishment of the Fund***

- 4 (1) There shall be established the Vihiga County Trade and Enterprise Fund.

***Vihiga County Trade and Enterprise Development Fund Board***

- 5 1) There shall be established a Board to be known as the Vihiga County Trade Enterprise Fund Board which shall be a body corporate with perpetual succession and a common seal.
- 2) The County Trade and Enterprise Fund referred to in Section 4, shall be under the direction and control of the County Trade and Enterprise Fund Board.
- 3) The headquarters of the Board is the Department of Industrialization, Trade, Tourism and entrepreneurship headquarter, but the board may establish such administrative offices as may be necessary for the furtherance of its functions.

***Composition and Appointment of the board***

- 6 1) The Board comprises the following members —
- a) Five persons each representing a sub-county appointed by the Executive Committee member for the time being responsible for trade;
  - b) Two persons of the opposite gender nominated by the most representative business membership organization, appointed by the County Executive Committee Member Responsible for trade;
  - c) One person nominated by the most representative association of women engaged in micro, small enterprises appointed by the County Executive Committee Member Responsible for trade;
  - d) One person nominated by the most representative association of youth engaged in micro and small enterprise appointed by the County Executive Committee Member Responsible for trade;
  - e) The chief officer for the time being responsible for matters relating to trade;
  - f) The Chief officer for the time being responsible for matters relating to County Treasury;
  - g) One person representing the special interest groups appointed by County Executive Committee Member responsible for trade;
  - h) A fund administrator who shall also be the Secretary to the Board shall be appointed by the County Executive Committee Member for Finance in consultation with County Executive Committee Member Trade.
- 2) The member under Sub-section (1) (e) (f) (h) may appoint alternate members in writing who must be senior officers to represent them in board meetings.
- 3) The County Executive Committee Member for the time being Responsible for trade shall in the appointment of members ensure compliance with two thirds gender principle;
- 4) The County Executive Committee Member Trade shall appoint a chairperson from amongst themselves during the first meeting

**Qualifications for appointment as member**

- 7 1) A person shall be eligible for appointment as a member if such a person meets the following criteria
- a) Is a Kenyan Citizen;
  - b) Holds a minimum diploma from a recognized institution in Kenya;
  - c) Has operated a business which is a micro and small enterprise in the county for a period of three years;
  - d) Satisfies the requirements of Chapter Six of the Constitution.
- 2) A person shall not be appointed to the Board if the person—
- a) has been convicted of a criminal offence and imprisoned for a term not less than six months;
  - b) is a member of a governing body of a political party;
  - c) has previously been removed from public office for contravention of the provisions of the Constitution or any other written law;
  - d) is an un-discharged bankrupt; and
  - e) Violates the Constitution or any other written law.

**Functions of the Board**

- 8 The Board shall—
- a) Formulate policies relating to the fund including credit policy;
  - b) Advise County Government on the structure and operations of the fund;
  - c) Administer the property and the funds in such a manner and for such purpose as shall promote the functions of the fund;
  - d) Mobilize resources for the enhancement of the fund's mandate;
  - e) Ensure prompt and equitable disbursement of funds in accordance with this Bill.
  - f) Compile better records, returns and reports required under this Bill basing on sex, age, region and other relevant factors.
  - g) Undertake periodic review of the legal framework;
  - h) Formulate training, development and capacity building programs for its employees;
  - i) Convene an Annual Forum for Fund Beneficiaries for sensitization purposes;
  - j) Ensure compliance within the Fund operations, sound financial management practices;
  - k) Provide where necessary management support services to eligible persons;
  - l) Protect the long term viability of the fund;
  - m) Collaborate with relevant institutions so as to promote access to credit and other financial services;
  - n) Ensure efficient management by monitoring and evaluating the performance of the fund; and
  - o) Perform any other functions assigned to it under this Act.

**Powers of the Board**

- 9 1) The board shall have all powers necessary for the performance of the functions under this Act.
- 2) Despite the generality of Sub-section (1), the board shall have power to —
- a) Invest any accruing monies of the fund not immediately required for its purposes in the manner provided under this Act;

- b) Open and maintain bank accounts;
  - c) Partner with any institution or person so as to further the purpose for which the fund is established;
  - d) To receive and consider all loan applications from eligible persons;
  - e) Receive grants, gifts, donations or endowments and make legitimate disbursements from them;
  - f) Ensure protection of the assets of the fund in such manner as is compatible for the purpose for which the fund is established;
  - g) Approve loans offered to the Fund.
  - h) Delegate any of its powers; and
  - i) Undertake any activity necessary for the fulfillment of any of the functions of the fund.
- 3) The board may, on such terms and conditions as it considers fit, delegate any of its powers, in writing, to any one or more of the members or the fund manager or an employee of the board.

**Secretary of  
the Board**

10. There shall be a secretary of the board who shall be the Fund manager as specified in 6(g).
- 1) The Fund manager shall, subject to the direction of the board, be responsible for the following duties—
    - a) open and operate a bank account at a bank to be approved by the County Executive Member responsible for finance;
    - b) supervise and control the administration of the Fund;
    - c) consult with the Board on matters relating to the administration of the Fund;
    - d) Ensure that the earnings of, or accruals to the Fund are retained in the Fund;
    - e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
    - f) prepare quarterly financial reports and submit to the County Executive Member and a copy to the Controller of Budget;
    - g) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the County Treasury and the statements shall be prepared in such a manner as the Public-Sector Accounting Standards Board shall prescribe;
    - h) furnish additional information as he or she may consider to be proper and sufficient for the purpose of examination and audit

by the Auditor-General in accordance with the provisions of the Public Audit Act;

- i) resolve any issues resulting from an audit that remains outstanding;
- j) ensure that all contracts entered into by the Fund are lawful and are complied with;
- k) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance in accordance with public procurement and Disposal Act;
- l) bring a matter to the attention of the County Executive Committee member, if in the Fund administrator's opinion a decision or policy or proposed decision or policy of the Fund may result in resources being used in a way that is contrary to subsection (10)(3);
- m) prepare a strategic plan for the Fund in conformity with the medium term fiscal framework and financial objectives of the county government;
- n) prepare estimates of expenditure of the Fund in conformity with the strategic plan referred to in paragraph (m);
- o) submit the estimates of the Fund, to the Board who, after approving it, shall forward it to the County Executive Committee member;
- p) manage the assets of the Fund to ensure that it receives value for money when acquiring, using or disposing of its assets;
- q) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the Fund;
- r) ensure that the Fund has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;



- s) provide the County Treasury with any information it may requires to fulfill its functions under this Act;
- t) provide information on any frauds, losses, or any violations and provide explanations for the actions taken to prevent similar conduct in future; and;
- u) Carry out such other responsibilities as may be specified in regulations by the County Executive Committee Member
- 2) A person is qualified for appointment as the fund manager if that person—
  - a) Is a citizen of Kenya
  - b) Holds a degree from a university recognized in Kenya;
  - c) Has at least five year experience in senior management; and
  - d) Is a professional in the fields of finance, banking or investment; and
  - e) Meets the requirements of leadership and integrity set out in chapter six of the Constitution.
- 3) The Board secretary is subject to the directions of the board and is responsible to it for the —
  - a) Implementation of the decisions of the Board;
  - b) Day to day management of the affairs of the fund;
  - c) Organization and management of the employees; and
  - d) Any other function that may be assigned by the Board.
- 4) The Board secretary shall hold office for a term of five years and is eligible for re-appointment once.
- 5) The secretary may be removed from office on the recommendation of the board to the County Executive Committee on the grounds provided under Section 16.
- 6) Before the secretary is removed from office on any of the grounds provided under Section 16, the secretary shall be given —
  - a) Sufficient notice of the allegations made against them; and
  - b) An opportunity to be heard either in person or by a legal representative.

**Board  
Secretariat**

11. The County Executive Committee member shall make available to the board and fund, services of adequate public officers from the Department of Trade as are necessary for the proper and efficient exercise of the functions of this Act

**PART III—GENERAL PROVISIONS RELATING TO THE BOARD**

**Tenure of  
office**

12. Every member of the board, other than members under 6(1) (c) (d) & (f) shall hold office on a part time basis for a term of three years but may be eligible for reappointment once.

- Remuneration** 13. The boards shall be paid such allowances in accordance with established County Public Service Policy.
- Meetings of Board** 14. 1) The business and affairs of the boards shall be conducted in accordance with the First schedule.  
2) Except as otherwise provided in the First schedule, the board may regulate its own procedure subject to the provisions of the law governing County boards.  
3) The board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not be entitled to vote on any of the board's decisions.
- Removal from Office** 15. 1) A member may be removed from office on recommendation of the County executive committee or as the case may be for—  
a) Inability to perform the functions of the office arising out of physical or mental incapacity;  
b) Gross misconduct;  
c) Incompetence or negligence; or  
d) Absence from three consecutive meetings of the board without a reasonable explanation.  
2) Before the County executive committee takes a decision under Sub-section (1), a member shall be given an opportunity to defend the allegations made against him/her.
- Vacation from Office** 16. A person ceases to be a member of the board if the member —  
a) Resigns in writing to the County executive committee member;  
b) Is convicted of a criminal offence and sentenced to a term of more than six months;  
c) Is declared bankrupt; or  
d) Dies.
- Filling of Vacancy** 17. Where a vacancy occurs in the membership of the board, appointment of a new member shall be done in accordance with the provisions of this Act.
- Common Seal** 18. The common seal of the board when affixed to a document and authenticated is officially noticed and unless the contrary is proved, an order or authorization of the Board under this section is presumed to have been given.

**PART IV—ADMINISTRATION OF VIHIGA COUNTY TRADE AND ENTERPRISE FUND**

- Eligibility Criteria.** 19. 1) A person is eligible to benefit from the fund if —  
a) is a resident of Vihiga County;  
b) Has a lawfully registered enterprise group with a viable business plan approved by the Board or a micro and small enterprise operating in the County for a period not less than 12 months; and;  
c) Is a lawfully registered society with a majority of its membership

and operations in Vihiga County; in the case of an existing business enterprise —

- 2) In addition to the requirements under Sub-section (1), every eligible applicant shall —
  - a) provide such security as may be specified;
  - b) provide a business plan indicating how the loan will be utilized, managed and repaid;
  - c) undergo any required financial literacy or business training;
  - d) undertake to maintain good business financial records;
  - e) Meet any other requirement set by the board.
- 3) Without prejudice to Sub-sections (1) and (2), a loan may be granted on such terms that —
  - a) The same is subject to the provisions of any law for the time being in force, redeemable for a fixed period of time;
  - b) The applicant is enabled to repay or redeem the same in advance of any date fixed for repayment or redemption, subject to such conditions as to payment of interest in lieu of notice or of a discount or otherwise as the board may determine.
- 4) In determining the beneficiaries under the fund, the board shall give special consideration to —
  - a) Micro, small and medium enterprises;
  - b) Priority sectors;
  - c) Youth and women-led enterprises; and
  - d) Progressive and well governed co-operative societies;
  - e) Other businesses in job-creating sectors;
  - f) Processing or value addition enterprises.
- 5) Members of the County Fund Board and staff of the fund shall not be eligible for loans.

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|--|------------|--|
| <b><i>Service Charge.</i></b>            | <b>20.</b> | Service charge on credit facilities provided under the fund shall be determined by the board with the approval of the County Assembly and published in the County Gazette  |
| <b><i>Size of Credit Facility</i></b>    | <b>21.</b> | <ol style="list-style-type: none"> <li>1) The fund may extend credit facilities to eligible applicants up to a maximum limit as may be prescribed by the fund policy.</li> <li>2) The board may determine different limits for different kinds of credit facilities.</li> </ol>          |
| <b><i>Annual Interest Rates</i></b>      | <b>22.</b> | The Board shall, in consultation with the County Executive Member set the annual interest rates applicable and publish them in the County Gazette.   |
| <b><i>Disbursement from the fund</i></b> | <b>23.</b> | 1) The board in consultation with County Executive Committee Member for Trade shall enter into a memorandum of understating with a Financial Institution for purposes of lending either directly or through other mechanism as the board may determine to the beneficiaries of the fund. |

2) The board may\_

a) incorporate a subsidiary to undertake commercial functions of the board; or

b) shall approve the standard memorandum of understanding template with financial institutions for regulating disbursement of the fund;

If it considers it necessary, partner with anybody for purpose of achieving its objectives under this Act, including partnering with the credit reference bureaus in enforcing repayments of the loan.

**Loan  
Repayment**

- 24.** 1) The Board shall in consultation with the County Executive Committee Member establish loan repayment conditions.  
2) In establishing the amount repayable by an applicant, the Board may charge a fee for insuring the loan.

**Loan Security**

- 25.** The Board in consultation with the County Executive Committee Member shall prescribe the acceptable forms of security.

**Administrative Fees**

- 26.** 1) The Fund may charge prescribed fees which may be varied from time to time including —  
a) Training fees payable by the trainees;  
b) Loan processing fees, insurance charges; and  
c) Such other fee as may be authorized under this Act or any other Law.

**Approval of  
Credit**

- 27.** 1) The Board may, subject to this Act and conditions prescribed by the board, approve any loan application under this Act.  
2) The board may approve a loan application under this section if  
a) The applicants declare in writing, that they agree to comply with and be bound by the terms and conditions of the fund; and  
b) The management is satisfied that the applicant has complied with the prescribed conditions.  
3) The board may cancel an approval given to an applicant under this section if the applicant does not comply with the prescribed conditions.  
4) The cancellation referred to in Sub-section (3) must be by way of a written notice of at least three months.

**Loan  
Agreement**

- 28.** A person is entitled to a credit facility if that person has entered into an agreement with the Board in a prescribed manner.

- Agreement for Performance of Functions** 29.
- 1) the agreement including —
    - a) to ensure proper training of any potential borrowers;
    - b) recovery of debts or any outstanding dues;
    - c) to facilitate implementation of business development service strategies; and
    - d) Arbitrate over disputes.
  - 2) An agreement under this section shall contain terms and conditions as the Board determines.
  - 3) The Board may terminate an agreement under this section where the party referred to in Sub section (1) fails to comply with any of the terms or conditions of the agreement.
- Obligations of the Board** 30.
- 1) The Board shall —
    - a) evaluate credit applications by using prudent financial principles;
    - b) exercise business discretion;
    - c) use due diligence in approving commercially viable proposals; and
    - d) Conduct the account of the borrowers with normal financial prudence.
  - 2) The Fund shall prescribe by way of policies or operating manuals-
    - a) Procedures for credit management; recoveries of the defaulted credit facility, or safeguarding its interest as a guarantor, as the Board may deem fit;
    - b) Ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the credit facility for any other benefit or in favor of any other creditor without informing the Board; and
    - c) Secure for the Fund or its appointed agency, through a stipulation in an agreement with the borrower, the right to share the borrowers' names and any other data with a registered Credit Reference Bureau.
- Review of the Fund Policy** 31.
- 1) The board shall review the operations of the fund from time to time to ensure that it implements the county government policy on facilitating access to affordable credit to residents.
  - 2) The County Executive Committee may, at any time, conduct a review of the operation of the fund.
  - 3) Not later than two months after completing the review referred to in Sub-section (2) the County Executive Committee Member shall report in writing to the County Executive on the findings and conclusions resulting from the review.
- Funds** 32. Funding Sources
- 1) There shall be paid into the Fund—
    - a) monies appropriated by County Assembly for the purposes of the fund;
    - b) grants, gifts, donations or other endowments given to

- the fund;
  - c) income from investments;
  - d) income which may accrue to the fund in the performance of its functions under this Act;
  - e) such monies as may be payable to the fund pursuant to this Act or any other written law;
  - f) such monies or assets as may accrue to the fund in the course of the exercise of its powers or the performance of its functions under this Act; and
  - g) All monies from any other lawful source provided or donated or lent to the fund.
- 2) There shall be paid out of the Fund —
- a) All grants to be issued by the board in the exercise of its powers or duties under this Act; and
  - b) All other expenditure incurred by the Fund in exercise of its powers or in the performance of functions under this Act.

#### **PART V — FINANCIAL PROVISIONS**

##### **Annual Estimates**

- 33.**
- 1) At least three months before the commencement of each financial year, the board shall cause to be prepared estimates of the revenue and expenditure of the fund.
  - 2) The annual estimates shall make provision for all the estimated expenditure of the fund for the financial year concerned and in particular shall provide for the —
    - a) payment of allowances, and other charges in respect of the employee of the fund;
    - b) payment of benefits and other charges which are payable out of the fund;
    - c) funding of the registration, monitoring and evaluation activities of the fund;
    - d) maintenance of the buildings, grounds and equipment of the fund;
    - e) funding of training, research and development of activities of the fund;
    - f) reserve funds to meet future or contingent liabilities in relation to insurance or replacement of buildings or equipment; and
    - g) Such other matters as the board may consider fit.
  - 3) The annual estimates shall be approved by the board at least two months before commencement of new financial year.

##### **Financial Year.**

- 34.** The financial year of the fund shall be the period of twelve months ending on the thirtieth of June every year.

##### **Accounts and Audit**

- 35.**
- 1) The Board shall keep proper books of account of the income, expenditure, assets and liabilities of the fund, and shall in this regard be subject to the provisions of any other law.
  - 2) The annual accounts of the Board referred to in Sub-section (1) shall be audited and reported upon in

accordance to the law relating to auditor General on 30<sup>th</sup> September.

#### PART VI—MISCELLANEOUS PROVISIONS

- Registry**      **36.**      1) There is established an electronic registry which shall be maintained and kept up to date by the fund.  
 2) Applicants may apply for loans and other services either electronically or manually but the fund shall conduct all its financial transactions electronically.  
 3) The requirement envisaged in Sub-section (2) shall be designed to minimize the burden on small businesses.  
 4) The fund shall maintain and preserve the following records and documents—  
     a) Minutes of the meetings of —  
         i. Its board; and  
         ii. Any standing committee or committees of the board;  
     b) a record of securities transactions;  
     c) a register of records of receipts and disbursement of the fund;  
     d) annual audited accounts;  
     e) financial records of all transactions of the Fund including receipts and payouts, cash and bank transactions which shall also be maintained in an electronic form including—  
         i. Ledgers;  
         ii. Journals; and  
         iii. Bank statements and reconciliation accounts.
- Database**      **37.**      There is established a database which shall be developed and maintained by the fund management and contain information and data regarding all loans awarded and management support services granted.
- Fund Oversight**      **38.**      The Board shall oversee the performance of the activities of the fund under this Act and may, in writing, give the Fund directions on matters of policy not inconsistent with the provisions of this Bill.
- Management of Information**      **39.**      1) The board shall publish and publicize all important information within its mandate.  
 2) A request for information in the public interest by a citizen —  
     a) shall be addressed to the Fund Manager or such other person as the Fund may for the purpose designate and may be subject to the payment of a reasonable fee in instances where the Fund incurs an expense in providing the information; and  
     b) May subject to confidentiality requirements of the fund.  
 3) Subject to Article 35 of the Constitution, the fund may decline to give information to a person where —  
     a) The request is unreasonable in the circumstances;  
     b) The information requested is at a deliberative stage by the fund;  
     c) Failure of payment of the prescribed fee; or

d) The person fails to satisfy any confidentiality requirements by the Fund.

4) The right of access of information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

- Regulations**      **40.**      1) The County Executive Committee Member may, in consultation with the Board and with the approval of the County Assembly, make regulations generally for the effective carrying out of the Provisions of this Act.
- 2) Without prejudice to the generality of Sub-section (1), the regulations may provide for—
- a) Conditions for granting of loans including interest rate and waivers;
  - b) Guidelines for granting of loans to prevent prejudices to applicants applying for loans;
  - c) Performance management;
  - d) Guidelines for public-private sector partnerships;
  - e) The fees payable for services provided by the Fund; and
  - f) Monitoring and evaluation mechanisms for projects undertaken under this Act.
- 3) The power to make regulations conferred under this Act shall be-
- a) For the purpose and objective of giving effect to the Constitution and this Act;
  - b) Limited to the nature and scope specifically stipulated in the Constitution and this Act; and based on the general principles and standards contained in the Constitution and this Act.
- Protection from Personal Liability**      **41.**      No act done by any member of the Fund, or employee of the Fund shall, if the act was done in good faith for the purpose of carrying out the provision of this Act, subject the person to any liability, action, claim or demand.
- Winding up of the fund**      **42.**      1) The fund may be wound up –
- (a) By a resolution of the County Executive Committee with the approval of the County Assembly;
  - (b) By a resolution of the County Assembly on a motion supported by at least seventy five percent of all the members;
  - (c) At the expiry of ten years from the date of commencement unless extended by the County Assembly;
- (2) All assets and liabilities of the Fund on the date of winding up shall revert to the County Government of Vihiga.
- Offences**      **43.**      A person who-
- a) Willfully applies any proceeds of a loan to any purpose other than the purpose for which the loan was approved; or



- b) Having obtained a loan, willfully destroys or misappropriates any security given in relation to the guaranteed loan; or
- c) Knowingly gives false information; commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

**General  
Penalty**

- 44.** A person who contravenes any provisions of this Act commits an offence and shall be liable to a fine of not exceeding thirty thousand shillings or to imprisonment for a term not exceeding one year or both.

**Internal  
Grievance  
Mechanism**

- 45.**
- 1) The board shall establish an internal grievance mechanism to address any complaint brought against the County Enterprise Fund.
  - 2) The County Executive in consultation with the board shall, within ninety days of the commencement of this Act make rules of procedure with respect to the internal grievance mechanism established under Sub-section (1).
  - 3) The rules of procedure made under Sub-section (2) shall be in accordance with Article 47 of the Constitution and shall make provisions with respect to investigation and determination of any complaint against the Fund.
  - 4) Without prejudice to the generality of Sub-section (3), the rules of procedure shall provide for the –
    - a) Procedure to be observed in lodging a complaint;
    - b) Manner in which the complaint is to be investigated; and
    - c) Manner in which appeals are to be made where an aggrieved party is dissatisfied.

**PART VII—TRANSITIONAL PROVISIONS**

**Savings and  
Transition**

- 46.**
- 1) In this section, former board means the Joint Loans Board established under the repealed Local Government Act, Cap 265.
  - 2) A person, who immediately before the commencement of this Act was an employee or was serving on secondment of former Joint Loans Board, shall, upon the commencement of this Act, be considered to be an employee of the fund.
  - 3) Upon the commencement of this Act-
    - a) subject to the transition to Devolved Government Act, all the rights, duties, obligations, assets and liabilities including any unpaid loans of the former Joint Loans Boards existing at the commencement of this Act shall be automatically and fully transferred to the fund;
    - b) Any reference to the Joint Loans Boards in any contract or document shall, for all purposes, be deemed to be a reference to the fund;
    - c) All contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of, or in relation to the former board shall have effect as if made or entered into by, on behalf of, or in relation to, the Fund;

- d) All actions, claims, arbitrations, applications and other proceedings, including proceedings on appeal or review, pending or existing immediately before the commencement of this Act, by, against, or in relation to the former board shall have effect as if they were proceedings by, against, or in relation to the fund, and may be continued and completed accordingly.

## **FIRST SCHEDULE**

### **PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNTY ENTERPRISE FUND BOARD**

- Meetings** 1. 1) The County Trade and Enterprise Fund Board shall have at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- 2) Meetings shall be convened by the chairperson and shall be held at such times and such places as the chairperson shall determine.
- 3) The respective chairpersons shall preside over all meetings and in the absence of the chairperson, by a person elected by the board.
- 4) The chairpersons may at any time convene a special meeting of the board as the case may be, and shall do so within one month of the receipt by the chairperson of a written request signed by at least five other members.
- Quorum** 2 The quorum of a meeting of the County Trade and Enterprise Fund Board is six out of eleven members.
- Voting** 3 A decision of the board shall be by a majority of the members present and voting and, in the case of an equality of votes; the chair person shall have a second chance to cast a vote.
- Minutes** 4 Minutes of all meetings shall be kept and entered in records kept for that purpose.
- Disclosure of Interest** 5 1) If a person is present at a meeting of the County Trade and Enterprise Fund Board or respective committee at which any matter is the subject of consideration and in which matter that person or that 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.
- 2) The person making the disclosure of interest under Sub-section (1) shall not, unless the board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.
- 3) A disclosure of interest made under Sub-section (1)

shall be recorded in the minutes of the meeting at which it is made.

- 4) A person who contravenes Sub-section (1) commits an offence and upon conviction is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.
- 5) A member or employee of the Fund shall not transact any business or trade with the fund.

#### **MEMORANDUM OF OBJECTS AND REASON**

The Bill establishes the Vihiga County Trade and Enterprise fund as a body fund charged with the implementation of the Act, with the sole purpose of providing financial services for micro and medium enterprises in order to promote business and investment growth within the county.

The Bill is divided into seven parts as follows—

**Part I**—provides for preliminaries including short title, interpretation as well as the object and purpose of the Act.

**Part II**—establishes the Vihiga County Trade and Enterprise fund and sets out functions of the fund, and further provides for the board of the corporation.

**Part III**—relates to the general provisions related to the board including tenure of office, remuneration, meetings, vacation, filling of Vacancy and common seal.

**Part IV** – relates to administration of the county Trade and enterprise fund including eligibility, interest rates, loans disbursement and obligation of the board.

**Part V** – relates to financial provisions of the board including sources of Funds, reporting, accounts and audit as well as compliance with finance and procurement laws.

**Part VI**—contains miscellaneous provisions including rules and Regulations.

**Part VII**— relates to transitional provisions which include savings and transitions.

The Bill respects the separation of powers of national and county governments and recognizes the critical role assigned to the county with regard to investments and growth.

The Bill shall occasion additional expense which will be provided for in the Budget estimates.

**Dated the            September 2018.**

**Hon. Calystus Ayodi Amuhaya**  
**Chairperson, Trade, Industry Tourism & entrepreneurship Committee.**