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TANA RIVER COUNTY ACTS, 2017

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**THE TANA RIVER COUNTY MICROFINANCE
ACT, 2017**

**AN ACT of the County Assembly of Tana River to
provide for the establishment of a microfinance
Corporation and for connected purposes**

ENACTED by the County Assembly of Tana River, as
follows—

PART I — PRELIMINARY

1. This Act may be cited as the Tana River County Microfinance Act, 2017 and shall come into operation upon publication in the *Gazette*.

Short title and
Commencement.

2. In this Act, unless otherwise requires—

Interpretation.

“Central Bank” means the Central Bank of Kenya established under the Central Bank of Kenya Act;

“Corporation” means the Microfinance Corporation established under section 4 of this Act;

“County Assembly” means the County Assembly of Tana River;

“County Executive Committee” means the County Executive Committee of the county government of Tana River;

“Board” means the Board of the Corporation established under section 6 of this Act;

“deposit” means a sum of money received or paid on terms under which it shall be repaid, with or without interest or a premium and either on demand or a time or in circumstance agreed by or on behalf of the person making the payment and the person receiving it, but does not include a sum of money which is paid as—

- (a) an advance or part payment under a contract for the sale, hire or other provision of property or service where the service is repayable only if the property or service is not sold, hired or otherwise provided, or
- (b) security for performing a contract;

“County Executive Committee member” means the County Executive Committee member for the time being responsible for finance.

3. The purpose of this Act is to provide for the establishment of a microfinance institution for providing financial services to women and youth in order to—

Objects and purposes of this Act.

- (a) promote local business and investment growth;
- (b) enhance access to capital and credit and financial services to small and medium enterprises;
- (c) reduce poverty and unemployment;
- (d) promote local economic growth.

PART II — THE MICROFINANCE CORPORATION

4. (1) There is established the Tana River County Microfinance Corporation.

Establishment of the microfinance corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding of movable and immovable property;
- (b) borrowing money or making investments;
- (c) entering into contracts, and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Corporation shall be owned by the County Government and no more than ten percent of the total shares of the Corporation may be allocated to any person.

(4) Notwithstanding subsection (3), the county government may, with the approval of the County Assembly, sell or dispose part of the ownership to any subscribers in accordance with the laws for the time being governing sale or disposal of shares or stocks in public entities and regulation of microfinance banks.

5. The functions of the Corporation shall be to—

Functions of the Corporation.

- (1) provide microfinance banking services to small and medium enterprises;
- (2) undertake any business related microfinance banking;

(3) carry out such other roles necessary for the better carrying out of the objects and purpose of this Act.

6. (1) The management of the Corporation shall vest in the Board of Directors which shall consist of—

Board of
Corporation.

- (a) a non-executive chairperson appointed by the governor and approved by the County Assembly;
- (b) Chief officer for the time being responsible for finance;
- (c) Chief officer for the time being responsible for trade;
- (d) one professional appointed by the County Executive Committee member through a competitive process and approved by the County Assembly;
- (e) the Managing Director who shall be an *ex officio* member;
- (f) Corporation Secretary who may be a staff of the corporation or an external person and shall be *ex officio* member; and
- (g) one person representing the chambers of commerce.

(2) A person shall qualify for appointment as chairperson if he or she—

- (a) is a citizen of Kenya;
- (b) holds a bachelor's degree in economics, business, law, finance, accounting or any other related field from a recognized university;
- (c) has experience of at least ten years in senior management in public or private sector; and
- (d) meets the requirements of chapter six of the Constitution.

(3) A person shall qualify for appointment as a member under sub section (1)(d) and (g) if he or she—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, business, law,

finance, accounting or any other related field from a recognized university;

- (c) has experience of at least 5 years in management; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) A person shall not be qualified to be a Corporation Secretary unless he or she is in good professional standing with the Institute for Certified Public Secretaries of Kenya.

(5) A person shall not be a member of the Board unless he or she is fit and proper to be in a Board of Microfinance bank as prescribed by the Central Bank.

(6) The members shall elect a Vice-Chairperson from amongst the members.

(7) Not more than two thirds of the members of the Board shall be of the same gender.

(8) The term of office for the Chairperson or a member other than the *ex-officio* members shall be a term of three years which may be renewed for one further and final term of two years.

7. The functions of the Board shall be to—

Functions of the Board.

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
- (b) uphold the vision and mission of the Corporation;
- (c) provide strategic guidance to the Corporation and ensure effective organizational planning;
- (d) advise the management of the Corporation generally on the exercise of the powers and the performance of the Corporation;
- (e) approve the estimates of the revenue and expenditure of the Corporation;
- (f) ensure effective and efficient risk management;
- (g) oversee the management performance; and
- (h) perform such other functions as are provided for under this Act or any other written law.

8. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.

Conduct of business.

(2) Except as provided for in the Schedule, the Board may regulate its own procedures.

9. (1) The Board may establish committees consisting of its members in order to enable discharge of its functions.

Committees of the Board.

(2) Notwithstanding subsection (1), the Board shall establish the following committees in accordance with the prescribed procedures—

- (a) executive committee;
- (b) audit and finance committee;
- (c) risk management committee; and
- (d) human resource management committee.

10. The remuneration of the Board shall be as determined by the County Executive Committee member upon the advice of the Salaries and Remuneration Commission.

Remuneration of the Board.

11. There shall be a managing Director of the Corporation who shall be the chief executive officer of the Corporation.

Managing Director.

(2) The managing Director shall be appointed by the County Executive Committee member in consultation with the Board and recruited through a competitive process.

(3) To qualify for appointment as a Managing director, a person must—

- (a) be a citizen of Kenya;
- (b) be a holder of a degree in economics, business, law, finance, accounting or any other related field from a recognized university;
- (c) have had experience in management for a period of not less than five years; and
- (d) meet the requirements of Chapter Six of the Constitution.

(4) The Managing Director shall hold office for a period of three years, on such terms and conditions of

employment as the Board may determine, and shall be eligible for reappointment for a further and final term of three years.

- (5) The Managing Director shall—
 - (a) in consultation with the Board, be responsible for the day to day management and direction of the affairs and transactions of the Corporation, the exercise discharge and performance of its objectives, functions and duties and the general administration of the Corporation;
 - (b) carry out any other functions as may from time be assigned by the Board
- (6) The Managing Director may—
 - (a) at any time, resign from office by issuing a notice in writing to the chairperson of the Board;
 - (b) be removed from office by the County Executive Committee member on recommendation of the Board, for—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or
 - (v) bankruptcy.

12. (1) The Corporation shall appoint such staff as are necessary for proper discharge of its functions under this Act, upon such terms as it may determine.

Staff of the Corporation.

- (2) The Corporation shall—
 - (a) recruit staff through a competitive process;
 - (b) ensure that there is sufficient number of staff qualified in matters related to finance, investment, analysis and management and project management;

- (c) ensure that the staff are qualified, competent, experienced and committed to its vision and mission.

(3) A person shall not be a staff of the Corporation if the person—

- (a) has been convicted of an offence related to fraud or embezzlement of funds; or
- (b) on reasonable grounds is suspected to have engaged in financial impropriety in a previous employment or engagement.

(4) The Corporation shall undertake due diligence and background assessment on character and professional ethics for any staff seeking employment with it.

13. (1) The common seal of the Corporation shall be kept in the custody of the Managing Director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

The common seal of
the Corporation.

(2) The common seal of the Corporation when affixed to a document and dully authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal shall be authenticated by the signature of the chairperson of the Board or the Managing Director.

(4) The Vice-Chairperson shall, in the absence of either the Chairperson or the Managing Director, in any particular matter authenticate the seal of the Corporation on behalf of either the Chairperson or the Managing Director.

14. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing done *bona fide* for executing the functions, powers or duties of the Corporation under this Act render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done *bona fide* be paid out of the funds of the Corporation.

15. The provisions of section 14 shall not relieve the Corporation of the liability to pay compensation or damages to any injury to any officer, member of staff, or agent of the Corporation, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

16. The Corporation shall establish and implement corporate governance principles and practices applicable to similar entities or as may be prescribed.

Corporate governance.

17. (1) The Corporation shall, within three months after the end of each financial year, prepare and submit to the County Executive Committee member a report of the operations of the Corporation for the immediately preceding year.

Annual reports.

(2) The annual report shall provide information regarding the activities and plans of the Corporation during the year to which it relates, sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include—

- (a) details of the performance of the Corporation against its key performance indicators;
- (b) report on the overall status of the business development and profitability including the Corporation's projections for following year;

- (c) such information and other material as the Corporation may be required by this Act to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) level of loan disbursements, key challenges faced and proposed measures;
- (f) the financial statements prepared under section 23;
- (g) report of the Auditor-General prepared under section 23; and
- (h) such additional information or other material as the County Executive Committee member may request in writing.

(3) The County Executive Committee member shall, within fourteen days of receiving the annual report submit it to the County Executive Committee and thereafter within twenty- one days transmit it to the Clerk to the County Assembly for tabling before the County Assembly for consideration

(4) The County Assembly may after considering the report make recommendations to the County Executive Committee member on appropriate ways of effectively implementing this Act.

PART III – FINANCIAL PROVISIONS

18. (1) The funds and assets of the Corporation shall consist of—

Funds of the Corporation.

- (a) such monies as may be appropriated by County Assembly for the purposes of the Corporation;
- (b) revenues realized from the Corporation's business;
- (c) such gifts, grants or monies received from any lawful source;
- (d) all monies borrowed from securities market or received as loans to the Corporation.

(2) The Corporation shall apply the money provided under this section for the furtherance of the objects and performance of the functions of the Corporation and as prescribed under this Act.

19. (1) The Corporation shall appoint an internal auditor who shall report directly to the Board on financial matters of the Corporation.

Internal Auditor.

(2) A person shall not be qualified to be appointed as an Internal auditor unless the person—

- (a) is a citizen of Kenya;
- (b) is a holder of a degree in business, accounting and finance or any related field from a recognized university;
- (c) is certified public accountant or holds an equivalent qualification certified by Institute of Certified Public Accountants of Kenya;
- (d) has at least three years' experience in auditing; and
- (e) meets the requirements of Chapter Six of the Constitution.

20. The financial year of the Corporation shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

21.(1) At least three months before the commencement of each financial year, the Corporation shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year.

Annual estimates.

(2) The annual estimates shall make provisions for all estimated expenditure of the Corporation for the financial year and in particular, the estimates shall provide for the—

- (a) allocations for business operations;
- (b) debt payment schedule;
- (c) payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (d) payment of allowances and other charges in respect of members of the Board;

- (e) payment of pensions, gratuities and other charges in respect of the Board and staff of the Corporation;
- (f) proper maintenance of the buildings and grounds of the Corporation;
- (g) maintenance, repair and replacement of the equipment and other property of the Corporation; and
- (h) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee for final approval.

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the County Executive Committee Member.

22. The Board shall cause to be kept proper books and records of accounts and assets of the Corporation in accordance with the International Accounting Standards or other requirements as may be prescribed.

Accounts.

23. (1) within a period of three months after the end of each financial year, the Board shall submit to the Auditor General, the accounts of the Corporation together with—

Financial reports and audit.

- (a) a statement of financial position as at the thirtieth day of June;
- (b) a statement of comprehensive income;
- (c) a statement of cash flow for the year ended;
- (d) a summary of significance accounting policies and other explanatory information; and
- (e) other financial statements applicable to similar institutions.

No. 12 of 2013.

(2) The accounts of the Corporation shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

PART IV – PROVISIONS RELATING TO MICROFINANCE SERVICES

24. The Corporation shall be guided by the following principles while carrying out its operations –

Operational principles.

- (a) value for money;
- (b) prudence in financial and business management;
- (c) efficiency;
- (d) economy;
- (e) competitiveness in approach to business;
- (f) commercial principles;
- (g) financial sustainability; and
- (h) any other principle aimed at meeting the objective of this Act.

25. The Corporation may while carrying out its functions –

Power and duties of the Corporation.

- (a) open savings or current accounts on behalf of any person placing deposits with the Corporation;
- (b) take or receive deposits from any person;
- (c) disburse or advance monies in form of loans;
- (d) take, receive or hold any appropriate movable or immovable assets as security or collateral for any loan advanced.

26. (1) The county government shall provide the initial Capital to the Corporation whether in the form of grant or loan.

Capitalization by the County Government.

(2) Notwithstanding subsection (1), the County Assembly may, from time to time appropriate monies either as loans or conditional or non-conditional grants to the Corporation for the purposes of enabling it to carry out its functions effectively.

27. Subject to the approval by the County Executive Committee and the County Assembly, the Corporation may

Borrowing powers.

borrow such monies as may be required for the purposes of carrying out its functions effectively.

28. Subject to the approval of County Treasury, the Corporation may, while borrowing money issue or provide any of its assets as collateral for any loan borrowed.

Issuance of collateral.

29. The County Government may guarantee any loan advanced to the Corporation subject to the approval by the County Assembly.

County government loan guarantee.

30. (1) The Corporation shall maintain such minimum liquid assets as may be prescribed and in accordance with guidelines issued by the Central Bank.

Minimum liquid assets.

No. 19 of 2006.

(2) "Liquid assets" has the same meaning assigned under the Microfinance Act, 2006.

31. The Corporation shall not lend any loan to a member of the Board unless the member is in full time employment of the Corporation.

Lending to Board members.

32. The Corporation may lend money or grant a credit facility to its member of staff provided that such loan or credit facility does not exceed the prescribed limit.

Insider lending.

33. (1) The Corporation may lend money or grant credit facility to any person provided they meet the prescribed conditions and standards.

Granting of loans or credit facility.

(2) The Corporation shall not lend any money or grant to a person or entity unless the Corporation has undertaken due diligence and established the capacity and suitability of a person to repay the loan and meet the obligations of the credit facility.

34. The Corporation shall ensure that the interest rates chargeable on loans are affordable to the small and medium enterprises.

Loan interest rate.

35. The Corporation may establish branches or agencies in any part of the Republic for the purposes of carrying out its functions.

Branches and agencies.

36. Subject to written law governing public investments and with the approval of the County Treasury, the Corporation may invest in bonds, securities, bank deposits, trust funds, treasury bills or any investment venture approved by the treasury.

Investment powers.

37. The Corporation shall—Non-performing
loans.

- (a) not lend any money or provide any credit facility to a person who is in default of fulfilling their obligations under a loan or credit facility agreement with the Corporation;
- (b) prepare a quarterly report on all non-performing loan or credit facilities and submit it to the treasury for onward transmission to the County Executive Committee for consideration.

38. The Corporation shall—Writing off bad
debts.

- (a) not write off bad debt unless it demonstrates to the County Executive Committee that there are no existing means of recovering the debt;
- (b) prepare an annual report for consideration by the County Assembly on the debts written off.

39. (1) The Corporation shall prepare a five-year business plan within four months after the Board is constituted which shall be forwarded to the County Executive Committee for approval.

(2) The County Executive Committee member shall, within fourteen days of the approval of the business plan by the County Executive Committee, transmit it to the Clerk to the County Assembly for consideration and approval.

(3) The business plan shall provide among others for—

- (a) analysis of business environment;
- (b) source of funds for business;
- (c) projected business growth;
- (d) projected profits;
- (e) capitalization;
- (f) expected return on capital or investment;
- (g) projected products;
- (h) estimated cost of the business and expenditures; and
- (i) any other matter as the county executive committee member may prescribe.

40. The Corporation shall maintain the prescribed—

Financial sustainability.

- (a) asset base to enable it realize its objectives;
- (b) liquidity ratios;
- (c) debt service plan; and
- (d) any other matter that the County Executive Committee member may from time to time prescribe.

41. The Corporation may enter into partnership or collaboration with any entity for the purpose of carrying out the objectives of this Act.

Partnership.

42. (1) The Corporation shall in consultation with the county executive committee establish a dividend policy which shall be reviewed annually.

Dividend policy.

(2) The dividend policy shall stipulate among others for—

- (a) the prevailing business conditions under which dividend may be paid out;
- (b) minimum percentage of annual dividend payout to the county government; and
- (c) any other matter as the County Executive Committee member prescribe.

43. The Corporation shall comply with the guidelines issued by the Central Bank.

Compliance with CBK Rules.

PART V – GENERAL PROVISIONS

44. (1) The County Executive Committee member shall, within ninety days, in consultation with the Board, make regulations generally for the better carrying out of the objects of this Act.

Regulations.

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

- (a) prescribe for the establishment of Committees of the Board;
- (b) prescribe for corporate governance principles;
- (c) prescribe for accounting standards;

- (d) prescribe for the limits on insider lending;
- (e) prescribe for the conditions for loans and credit facilities;
- (f) prescribe for matters related to dividend policy.

SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Section 8.

1. Any member of the Board, other than chief officers shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment, for a further and final term of three years.

Tenure of office.

2. Any member of the Board may—

Vacation of office.

- (a) at any time resign from office by notice, in writing, the County Executive Committee member;
- (b) be removed from office by the County Executive Committee member if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his or her creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board;
 - (vi) fails to comply with the provisions of this Act relating to disclosure;

(vii) exhibits gross misconduct;

(viii) commits a serious violation of the Constitution or any other written law.

3. (1) The Board shall meet not less than four times 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

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless at least three members of the Board with the right to vote otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he or she is present but, in his or her absence and that of the Vice-Chairperson, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted there at, have all the powers of the Chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration

Conflict of interest.

or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of such a member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he or she shall in addition to complying with the other provisions of this section, disclose the conflict that exists to the executive in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the County Executive Committee member any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred thousand shillings, or both.

5. (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behavior to be observed by the members and staff of the Board in the performance of their duties.

Code of conduct.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code of amendments in the *Gazette* and in a newspaper circulating nationally, inviting public comments.

(3) The Board shall include in its annual report, a report on compliance with the code during the period covered by the annual report.

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.

6. Any contract or instrument, which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into on behalf of the Board by any person generally.

Execution of interest.

7. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minute