SPECIAL ISSUE

Marsabit County Gazette Supplement No. 4 (Bills No. 3)

REPUBLIC OF KENYA

MARSABIT COUNTY GAZETTE SUPPLEMENT

BILLS, 2014

NAIROBI, 4th June, 2014

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THE MARSABIT COUNTY BUSINESS LICENSING AND DEVELOPMENT BILL, 2014

A Bill for

AN ACT of County Assembly of Marsabit to establish a legal and institutional framework to facilitate Business Licensing and regulation of business sector in the county, and provide access to affordable credit by Micro, Small, and Medium enterprises through establishment of the County Enterprise Development Fund; establish County Enterprise Fund Board and provide for their composition, functions and powers; administration of the County Enterprise fund; and for connected purposes

ENACTED by the County Assembly of Marsabit as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Business Licensing and Development Act 2014 and shall come into operation on such date as the County Executive Committee Member responsible for matters related to business, with the concurrence of the Governor.

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

“Board” means the County Enterprise Development Fund oversight body established under section 6;

“Board Secretary” means the person appointed County Enterprise Board under section 11;

“Business Association” means a group of micro and small enterprises Licensed under this Act for the purpose of accessing services and mobilizing resources for the development of the aforementioned enterprises;

“County Enterprise Board” means the County Trade Development Loans Joint Board established under section 5;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to trade;
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“Enterprise” means an undertaking or a business concern whether formal or informal engaged in production of goods or provision of services;

“Fund” means the County Enterprise Development Fund established under section 31;

“Chief Officer” means the Chief Office for the time being responsible for matters relating to trade.

“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 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 or the registered capital of the enterprise does not exceed ten million shillings;
  (ii) the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings;

“person” includes a company, association or other body of persons whether incorporated or unincorporated; and

“Registrar” means the County Registrar of Business and Enterprise Development designated as such under section 4;

“Small Enterprise” means a firm, business, service, industry or a business activity;
(a) whose annual turnover ranges between five hundred and five million shillings; and
(b) which employs between ten and fifty 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 ten million and fifty million shillings; and

(ii) service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five million.

3. The object and purpose of this Act is to provide a legal and institutional framework through promotion, regulation and development of businesses by—

(a) providing an enabling business environment for start-ups and flourishing of small businesses through business training;

(b) promote fair Business practices and consumer protection through regulation and enforcement of Weights and Measures services;

(c) promoting and nurturing growth of micro and small enterprises to enhance self-reliance among youths and women;

(d) establish a legal and institutional framework to facilitate access to affordable credit by Micro, Small and Medium enterprise;

(e) set uniform standards in the management of the enterprise fund throughout the county; and

(f) ensure equal and fair treatment of Micro, Small and Medium entrepreneurs in accessing loans.

PART II—REGULATION OF MICRO AND SMALL ENTERPRISES

4. (1) There shall be an office of the County Business Registrar who shall be designated by the County Executive Committee responsible for matters relating to businesses, including micro and small enterprises.

(2) The Registrar shall be responsible for the Licensing of micro and small enterprises, partnerships, and business association in accordance with the provisions of this Act.
(3) The County Executive Committee Member responsible for business matters shall designate such other officers who are required to assist the Registrar in the performance of functions under this Act.

5. (1) Every Business and/or business association or firm which intends to be licensed under this Act shall within twenty-one days after formation make an application to the Registrar under this Act.

(2) An application under this section shall be made in the prescribed manner and shall be accompanied by—

   (a) a copy of duly filled application form(s);
   (b) a copy of the constitution and other constitutive documents in case of a business association;
   (c) names and addresses of the founders of the Business or Business Association;
   (d) the postal and physical address of the principal place of doing business of the applicant;
   (e) the prescribed fee, if any; and
   (f) such other particulars or information as may be required by the Registrar in order to assist the Registrar to determine whether or not the business meets the requirements for licensing under this Act.

6. The Director responsible for matters relating to business may be designated as Registrar, shall within fourteen days after receiving an application under this Act—

   (a) consider the application and any further information provided by the applicant; and
   (b) if satisfied that the application meets the requirements of this Act, license the Business or business association.

(1) Upon approval of application, the Registrar shall issue a License.

(2) The Registrar shall give written notice in the prescribed form to the business or business association calling upon the firm, business association or firm to show
cause, within such period as is specified in the notice, why its Licensing should not be cancelled or, as the case may be suspended, and if the business or business association fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the License as the case maybe.

(3) The Registrar may, with the approval of the County Executive Committee Member at any time cancel any Licensing made under this Act.

(4) The Registrar shall cancel the Licensing of any licensed business, business association or firm which has ceased to be a business, business association or firm within the meaning of this Act.

(5) Where the Licensing of business, business association or firm is cancelled under this section, the Registrar shall at the same time cancel the licensing of every branch of that business or association.

(6) Where the licensing of a business, business association or firm has been suspended under this section, the business, business association or firm shall not take any action, nor permit any action to be taken, in furtherance of its objects except:

(a) the payment of its debts; and

(b) such action as the Registrar may from time to time authorize.

(c) A business, business association or firm which contravenes subsection (6) commits an offence.

7. (1) If the Registrar has reason to believe that any licensed business, business association or firm has ceased to exist, the Registrar may publish in the County Gazette, a notice calling upon such business, business association or firm to furnish the Registrar, within a period of three months from the date of the notice, with proof of its continued existence.

(2) If at the expiration of such period the Registrar is satisfied that the business, business association or firm has ceased to exist, the Registrar shall cancel the licensing of the business or association, and shall thereupon publish in the County Gazette a notice of such cancellation.
(3) If the Registrar is satisfied beyond doubt that a licensed business, business association or firm has ceased to exist, the Registrar may immediately proceed under subsection (2) without having previously published a notice in the County Gazette, and the remaining provisions of that subsection shall apply accordingly.

8. (1) Any business, business association or firm aggrieved by the Registrar's refusal to register it, or by the cancellation or suspension of its licensing under section of this Act may in the case of any other business or association, appeal to County Executive Committee Member responsible for matters relating business, within twenty-eight days of such refusal, cancellation or suspension.

(2) A business or business association aggrieved by the decision of the Executive Committee under subsection (1) may present his case to a committee established for such purpose before final appeal to the Magistrates' Court within thirty days if unsatisfied.

9. (1) Every licensed business or business association shall have a physical and a postal address, and notice of the situation of the office and of the postal address shall be given to the Registrar in the prescribed form on application for licensing.

(2) All communications and notices required or authorized to be sent under, or for purposes of this Act or regulations made thereunder may be sent by post addressed to the postal address of the business or association.

(3) A notice in the prescribed form of any change of the situation of the physical or postal address of a licensed business or business association shall be given to the Registrar within twenty-eight days of the change, and the notice shall be signed by the licensed official of the business or business association.

(4) Any licensed business, business association or firm which:

(a) operates without having a physical address or without having a postal address, or without having given notice of the situation of its address as required by subsection (1);
(b) operates at any place without having given notice of the change in the situation thereof to the Registrar as required by subsection (3); or

(c) fails to give notice of any change of its postal address as required by subsection (3) commits an offence.

10. (1) A notice in the prescribed form of any change of officers of a licensed business association or firm shall be given to the Registrar within fourteen days of the change, and the notice shall be signed by three of the licensed officers of the business association or firm.

(2) Any licensed business association or firm which fails to give notice as required under subsection (1) commits an offence penalizable by a fine.

11. (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a licensed business association or firm as a result of which he/she is not satisfied as to whether they have been properly constituted as officers of the business association or firm, the Registrar may, by order in writing, require the business association or firm to produce within thirty days of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the business association or firm or of the institution of proceedings for the settlement of such dispute.

(2) If an order under subsection (1) is not complied with to the satisfaction of the Registrar within the period set out in the order or such other longer period as the Registrar may determine, the Registrar may with approval of the Executive Committee Member cancel the Licensing of the business association or firm.

(3) A business or Business Association aggrieved by the cancellation of its License under subsection (2) may appeal to the Magistrates’ Court within thirty days of such cancellation.

12. (1) The policy of every licensed business association or firm, formed after the commencement of this Act shall provide, to the satisfaction of the Registrar, for all the matters specified in the First Schedule to this Act and shall not be amended so that it ceases so to provide.
(2) The Registrar may, by order in writing, require any business association or firm which, at the commencement of this Act, is licensed to amend its constitution or rules within two months from the date of the order, to provide for all or any of the matters specified in the First Schedule to this Act, and, notwithstanding its constitution or rules, the business association or firm, for the purpose of complying with the order, shall convene a meeting of the same kind as is required by its constitution or rules for amending its constitution or rules, or if the constitution or rules make no provision for such amendment, the business association or firm shall convene a general meeting of members for the purpose.

(3) If a licensed business association or firm contravenes an order given under subsection (2), the business association or firm and every officer thereof each commits an offence, and the business association or firm shall on conviction, be liable to a fine not exceeding twenty thousand shillings, and every officer shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or both.

(4) An officer shall not be convicted of an offence under subsection (3) if the officer establishes to the satisfaction of the Investigating Committee that he or she exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his or her control.

13. (1) A licensed business association or firm shall not—

(a) amend its name, or its constitution or rules;

(b) become a branch of, or affiliated to or connected with, any firm or group of a political nature;

(c) dissolve itself, except with the prior consent in writing of the Registrar, obtained upon written application to the Registrar signed by three officers of the business association or firm.

(2) An application by a business association or firm to do any of the things specified in subsection (1) shall be accompanied by a copy of the minutes of the meeting at which the resolution to do that thing was passed, certified
as a true copy by three officers of the business association or firm, and the application shall be delivered to the Registrar within fourteen days from the date on which the resolution was passed.

(3) A licensed business association or firm which contravenes this section commits an offence attracting penalties.

14. (1) A person who has been convicted of a crime involving fraud or dishonesty shall not be appointed or elected—

(a) to the office of Treasurer or Finance Officer of a licensed business association or firm;

(b) to any other office in such a business association or firm the holder of which is responsible for the collection, disbursement, custody or control of the funds of the business association or firm or for its accounts; or

(c) to be trustee or auditor of such a business association or firm.

(2) An officer of a licensed business association or firm shall not be appointed as an auditor of that business association or firm.

15. Any person who—

(a) acts or purports to act as an officer of a licensed business association or firm, and who has not been duly appointed or elected as an officer of that business association or firm; or

(b) having been appointed or elected as an officer of a business association or firm, otherwise than at the time of the formation of the business association or firm, acts as an officer of that business association or firm after the end of the period prescribed by section 41(1) of this Act for giving notice of his or her appointment or election to the Registrar, no such notice having been given within such period, commits an offence and shall be liable on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one six months, or to both.
16. (1) Every licensed business association or firm shall keep a register of its members in such form as the Registrar may specify or as may be prescribed, and shall cause to be entered therein the name and address of each member, the date of his or her admission to membership, and the date on which he or she ceases to be a member.

(2) A licensed business association or firm which contravenes subsection (1), and its officers, commits an offence, and the business association or firm shall be liable on conviction to a fine not exceeding twenty thousand shillings, and every officer shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(3) An officer shall not be convicted of an offence under subsection (2) if the officer establishes to the satisfaction of the court that he or she exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his or her control.

17. (1) Every licensed business association or firm shall keep one or more books of account, and shall cause to be entered therein details of all moneys received and payments made by the business association or firm.

(2) A licensed business association or firm which contravenes subsection (1) commits an offence.

18. (1) A licensed business association or firm shall make its books of account and all documents relating thereto, and a list of the members of the Business or Association, available for inspection by—

(a) any officer or member of the business association or firm at such place and at such times as may be provided for in the constitution of the business association or firm; or

(b) the Registrar, or by any person authorized by him or her in writing in that behalf, at the office of the Registrar at any reasonable time specified by him or her, if so required in writing by the Registrar.

(2) A licensed business association or firm which fails to make available to the Registrar, at his or her office and at the specified time, any books of account, documents or
lists of members which he or she has been required under subsection (1) to make so available commits an offence.

(3) A person who obstructs the Registrar or any such authorized person in the carrying out of an inspection under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

19. (1) Every licensed Business, business association or firm shall furnish annually to the Registrar, on or before the prescribed date, such returns, accounts and other documents as may be prescribed.

(2) If any return, account or other document furnished under subsection (1) is incomplete in any material particulars, it shall be taken not to have been furnished for the purposes of subsection (1).

(3) A licensed business association or firm which contravenes subsection (1) commits an offence.

(4) A person who willfully makes or orders or causes or procures to be made any false entry in or omission from any return, account or other document furnished under this section commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months or to both.

20. (1) Where the Registrar has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of his or her functions under this Act so to do, he or she may, by order in writing, require any licensed business association or firm to furnish him or her with:

(a) a true and complete copy of its constitution or rules;

(b) a copy of certificate of registration

(c) a copy of the latest renewed license in application;

(d) a true and complete list of its officers and members or shareholders;
(e) a true and complete copy of the minutes of any meeting held by the business association or firm or firm at which officers of the business association or firm were elected or appointed or are ostensibly appointed or elected;

(f) a true and complete return of the number of meetings held by the business association or firm during such period as the Registrar may determine, stating the place or places at which such meetings were held;

(g) The audited accounts of the business association or firm covering such period as the Registrar deems necessary for the purpose for which the order is made; and

(h) such other accounts, returns and other information as may be prescribed.

(2) An order given under subsection (1) shall require compliance therewith within such period as may be specified in the order, which shall not be less than twenty-one days in respect of the documents specified in subsection (1) (a), (b), (c), (d), (e) and (f), and not less than sixty days in respect of the documents specified in subsection (1) (e), but the Registrar may, upon application, extend the period.

(3) Where the Registrar ordered the auditing of accounts under subsection (1) (e), the cost of the audit shall be paid out of the funds of the business association or firm in respect of which the order is made, unless the Registrar otherwise directs.

(4) A business association or firm which, on the ground of its failure to comply with an order to furnish duly audited accounts under this section, has had its Licensing cancelled under section 36 shall not license again, and no Business, business association or firm which, in the opinion of the Registrar, is a successor of such a business association or firm, shall be licensed, unless in either case, in addition to compliance with the provisions of this Act concerning licensing, the application for licensing is accompanied by the duly audited accounts required by the order.
A licensed business association or firm which fails to comply with an order given under subsection (1) commits an offence.

If any information or document furnished to the Registrar in pursuance of an order given under this section is false, incorrect or incomplete in any material particular, there shall be deemed to have been no compliance with such order.

In this section, the expression “audited” means audited by a person approved by the Registrar.

The Registrar may, where it appears to him or her to be in the interests of the members of any business association or firm, publish in the Gazette, or by advertisement in any newspaper or in any other manner he or she may deem necessary, any information received by him or her under section 43 or 53 of this Act.

The Registrar or any administrative officer or any police officer above the rank of Corporal may, in writing, require any person who he or she has reason to believe is able to give any information as to the existence or operation of any business association or firm which has been dissolved or has otherwise ceased to exist, to attend before him or her at a specified time, and such attendance may be required at any police station or police office situated within the county or sub-county or at the office of sub-county administrative officer within the county, or at the office of the Registrar.

Any person who, without reasonable cause, fails to comply with a requirement made under subsection (1) or, having attended in compliance therewith, refuses or fails to give his or her correct name and address and to answer truthfully all questions that may be properly put to him or her, and to produce all documents in his or her custody, possession or power relating to such Business, business association or firm or suspected Business, business association or firm which he or she has been required to produce, commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding nine months, or to both.

The requiring officer may record in writing any statement made to him or her by the person attending.
before him or her, whether such person is suspected of having committed an offence under County or National law or not, and any such written statement shall be signed by the person making it after it has been read to him or her in a language which he or she understands, and after he or she has been invited to make any correction he or she may wish.

(4) If any person does anything which constitutes an offence under subsection (2), the requiring officer may, if he or she considers it advisable to provide for the future identification of such person, order that a photograph and impressions of fingerprints of such person be taken, and section 21 (but not including the proviso to subsection (1) thereof) of the Police Act shall apply accordingly as though the person were in lawful custody.

23. (1) The County Executive Committee Member responsible for business may CEF Board prescribe measures for—

   (a) Determining categories of micro and small enterprises to be assisted subject to section 31 of this Act; determining the kind of broad based assistance to be rendered.

   (2) In determining the categories of micro and small enterprises to be assisted, the Executive Committee member shall consider the potential and viability of the enterprises.

PART III—ESTABLISHMENT AND MANAGEMENT OF THE COUNTY ENTERPRISE DEVELOPMENT FUND

Application—This Act applies to the County government

24. (1) There is established the County Enterprise Development Fund.

   (2) The headquarters of the Fund is the County Headquarter, but the Fund may establish such administrative offices as may be necessary, for the furtherance of its functions.

25. (1) There is established the County Enterprise Development Fund Board.

   (2) The Board is a body corporate with perpetual succession and common seal and in its name is capable of—
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(i) suing and being sued;
(ii) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;
(iii) enter into contracts;
(iv) borrowing and lending money; and
(v) doing or performing all such other things or acts as may be necessary in furtherance of its purposes and functions.

26. (1) The County Enterprise Development fund Board comprises the following members—

(a) a non-executive chairperson appointed by the Governor from amongst members appointed under paragraph (f) (i) (ii) or (iii);
(b) the Chief Officer in the Ministry for the time being responsible for matters relating to trade;
(c) the Chief officer to County Treasury;
(d) Four persons nominated by the county Executive member responsible for trade by virtue of their expertise, which among others include—
   (i) knowledge and experience in matters relating to Micro finance, banking and investment;
   (ii) knowledge and experience in matters relating to finance, accounting and auditing; and
   (iii) Knowledge and experience in matters relating to Entrepreneurship.

(2) The member under subsection (1) (b) (c) (d) and (e) may appoint alternate members in writing who must be senior officers to represent them in Board meetings.

(3) A person is not qualified for appointment if that person—

(a) prior to the consideration for appointment, was convicted of a criminal offence;
(b) is a member of Parliament or County Assembly; or
(c) is adjudged bankrupt.
(4) The nominations for appointment of members of the National Board, other than members—

(a) representing County Ministries shall be done competitively by the Public Service Commission through:-

(b) invitation of applications from qualified persons by a notice in at least one newspaper of national circulation;

(c) consideration and short listing of qualified persons;

(d) interview and nomination of at least twice the number of required members; and

(e) Submission of the nominees to the County Executive for appointment.

(5) The County executive shall, by notice in the gazette, appoint members of the Board from among the nominees submitted under subsection (3) taking into account—

(a) the principle that not more than two-thirds of the members should be of one gender; and

(b) the diversity of the people of County.

(6) The County Executive may appoint one third of the members in a staggered manner to ensure that their terms do not lapse at the same time.

(7) The fund manager is an ex officio member of the Board with no voting rights.

27. A person is qualified for appointment as a member of the Board if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a recognized university in Kenya;

(c) has at least five years senior management experience in—

(i) finance and banking;

(ii) accounting and auditing;
The Marsabit County Business Licensing and Development Bill, 2014

(iii) economics;
(iv) entrepreneurship; or
(v) any other relevant field; and
(vi) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

28. 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) establish uniform standards for the operations of the County Governing Board;
(d) administer the property and the funds in such a manner and for such purpose as shall promote the functions of the fund;
(e) mobilize resources for the enhancement of the fund’s mandate;
(f) partner with county government for purposes of creating cooperation between the two levels of government in the management of the fund;
(g) keep disaggregated data by sex, age, region and other relevant factors;
(h) undertake periodic review of the legal framework;
(i) formulate training, development and capacity building programmes for its employees;
(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) monitor and evaluate the performance of the fund; and
(o) perform any other functions assigned to it under this Act.

29. (1) The Board shall have all powers necessary for the performance of the functions under this Act.

(2) Despite the generality of subsection (1), the Board shall have power to—
(a) invest any 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) delegate any of its powers; and
(h) 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 chief Executive Officer or an employee of the Board.

30. (1) There is a Secretary of the Board who shall be the Fund Manager, on such terms and conditions as may be specified in the instrument of appointment.

(2) A person is qualified for appointment as a Board Secretary if that person—
(a) is a citizen of Kenya;
(b) holds a degree from a university recognized in Kenya;
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(c) has at least five year experience in management:
(d) senior management; and
(e) a profession directly relevant to the functions of the Fund Manager; and
(f) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(4) 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.

(5) The Board Secretary shall hold office for a term of five years and is eligible for re-appointment once.

(6) The Secretary may be removed from office on the recommendation of the Board on the grounds provided under section 23.

(7) Before the Secretary is removed from office on any of the grounds provided under section 23, 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.

31. The County Executive Committee shall make available to the Board and Fund the services of adequate public officers as are necessary for the proper and efficient exercise of the functions of this Act.
32. (1) The management of the fund at the county level is vested in the County Enterprise Development Fund Board.

(2) The County fund Board referred to in sub section (1) shall be established in the county and shall be under the direction and control of the Board.

(3) The County fund Board is body corporate with perpetual succession and a common seal and in its own corporate name capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) enter into contracts;

(d) borrowing and lending money; and

(e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

PART IV—GENERAL PROVISIONS RELATING TO THE BOARD

33. For purposes of this Part, Board means the County fund Board.

34. (1) The Boards may establish committees for the better carrying out of its functions.

(2) The Boards may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted under subsection (2) shall not be more than two.

35. (1) Every member of the Board holds office on a part time basis for a term of three years but may be eligible for reappointment once.

(2) Where a member of the Board opts to apply for reappointment in accordance with Sub-section (1), the reappointment may only be considered based on merit.
(3) The County executive Committee for the time being responsible for matters relating to trade, as the case may be, shall put in place measures to ensure that one third (2) of the members of the Board are appointed in a staggered manner separated by a year.

36. The Boards shall be paid such allowances as the county Secretary may from time to time determine in consultation with the Governor and County public Service Board.

37. (1) The business and affairs of the Boards must be conducted in accordance with the 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 state corporations.

(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.

38. (1) A member may be removed from office by 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 subsection (1), a member shall be given an opportunity to defend the allegations made against him/her;

(3) Despite subsection (1) and subject to subsection (2), the Board may remove a member on any of the grounds specified in subsection (1) and by a resolution taken by two thirds majority of all the members of the Board in a special meeting for that purpose.

39. A person ceases to be a member of the Board if the member—

(a) having been nominated by the relevant umbrella body, the appointment is revoked;
(b) having been nominated by the relevant umbrella body, ceases to be a member of such body;
(c) resigns in writing to the County Executive Committee Member;
(d) is convicted of a criminal offence and sentenced to a term of more than six months;
(e) is declared bankrupt; or
(f) Dies.

40. Where a vacancy occurs in the membership of the Board, the County Executive Committee as the case may be, shall appoint a new member in accordance with the provisions of this Act.

41. (1) The affixing of the common seal of the Board may be authenticated—

(a) in the case of the Board by the signature of the Chairperson and a board member, Fund Manager; and

(b) in the case of a County fund Board by the signature of the Chairperson and Fund Manager.

(2) A document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of—

(a) the Chairperson and a member of the Board, in the case of Board; and

(b) the Chairperson and chief executive officer, in the case of County fund Board.

(3) Where the Chairperson is absent, in the case of Board, that Board may nominate a member to authenticate the seal on behalf of the Chairperson;

(4) Where the Chairperson or the chief executive officer is absent, in the case of County fund Board, that Board may nominate a member to authenticate the seal on behalf of either the Chairperson or the Fund Manager; and

(5) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board
(6) 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 V—ADMINISTRATION OF COUNTY
ENTERPRISE DEVELOPMENT FUNDS

42. (1) A person is eligible to benefit from the fund if:-

(a) in the case of an existing business enterprise-
   • it meets the criteria of Board from time to time;
   • is registered and licensed to operate as such; and
(b) the application is restricted to a specific purpose as
    prescribed by the Board.

(2) In addition to the requirements under subsection
(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 Board and County Fund Board and staff of the fund shall not be eligible for loans.

43. Interest rate on credit facilities provided under the fund shall be as prescribed in either Kenya Gazette or County Gazette by the Board.

44. (1) The fund may extend credit facilities to eligible applicants up to a maximum limit as may be prescribed by the fund policy.

(2) The Board may determine different limits for different kinds of credit facilities.

45. (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.
46. (1) The County fund Board may, subject to this Act and conditions prescribed by the Board, approve any loan application under this Act.

(2) The County fund 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 County Fund 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 subsection (4) must be by way of a written notice of at least three months.

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

48. (1) The County Enterprise Fund Board may enter into an agreement with any person or institution for the performance of such functions under the fund as may be specified in 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 County fund Board determines.

(3) The County fund Board may terminate an agreement under this section where the party referred to in subsection (1) fails to comply with any of the terms or conditions of the agreement.

49. (1) The County Fund 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 favour 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.

50. The Board shall review the operations of the Fund from time to time to ensure that it implements the 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 subsection the County Executive Committee Member shall report in writing to the County Executive on the findings and conclusions resulting from the review.

51. Funding Sources

(1) There shall be paid into the Fund—
(a) monies provided by County Assembly for the purposes of the fund
(b) monies provided by County Government for the purpose of the fund;
(c) grants, gifts, donations or other endowments given to the fund

(d) income from investments;

(e) income which may accrue to the fund in the performance of its functions under this Act;

(f) such monies as may be payable to the fund pursuant to this Act or any other written law;

(g) 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

(h) all monies from any other lawful source provided or donated or lent to the fund.

(3) 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.

52. Additional Functions of the Board.

(1) The Board shall—

(a) ensure that the Fund is adequately funded for purposes of this Act;

(b) ensure leveraging of the proceeds of the Fund in accordance with this Act;

(c) ensure efficient management of the Fund;

(d) liaise with the national Treasury on financial matters;

(e) ensure prompt and equitable disbursement of the funds in accordance with this Act;

(f) compile and prepare proper records, returns and reports required under this Act; and

(g) perform any other functions assigned to it under this Act.

53. (1) The Fund Manager of the Board shall act as Secretary to the Board.
(2) The Fund Manager shall, subject to the direction of the Board, be responsible for the—

(a) implementation of the decisions of the Board;
(b) day to day management of the affairs of the Fund; and
(c) any other function that may be assigned by the Board.

PART VI—FINANCIAL PROVISIONS

54. (1) At least three months before the commencement of each financial year, the fund 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 funds 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 before the County Assembly.

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

56. (1) The Board and County Enterprise Fund 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 and County Enterprise Fund Board referred to in sub section (1) shall be audited and reported upon in accordance to the law relating to public audit.

PART VII—MISCELLANEOUS PROVISIONS

57. (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 subsection (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 boards; and

(ii) any standing committee or committees of the boards;

(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.

58. There is established a database which shall be developed and maintained by the fund and contain information and data regarding all loans awarded and management support services granted.
59. (1) The County executive Committee 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 Act.

(2) The County Executive Committee may appoint an oversight committee for purposes of subsection 60. (1)

60. (1) The Fund 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 Chief Executive Officer 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.

(5) Every member and employee of the Fund shall sign a confidentiality agreement.

61. (1) The County Executive Committee Member may, in consultation with the Board, make regulations generally for the effective carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (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
(c) Based on the general principles and standards contained in the Constitution and this Act.

62. 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.

63. 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.
64. A person who contravenes any provisions of this Act commits an offence under shall be liable to a fine of not exceeding thirty thousand shillings or to imprisonment for a term not exceeding one year or both.

65. (1) The Board shall establish an internal grievance mechanism to address any complaint brought against the County Enterprise Fund Board.

(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 subsection (1).

(3) The rules of procedure made under subsection (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 Enterprise Fund Board.

(4) Without prejudice to the generality of subsection (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 VIII—TRANSITIONAL PROVISIONS

66. (1) In this section, former Board means Joint 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 Board, shall, upon the commencement of this Act, be considered to be employees 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 Boards existing at the commencement of this Act shall be automatically and fully transferred to the fund;
(b) any reference to the 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.

SCHEDULE 1

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

1. (1) The Board shall have at most eight meetings in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

The County 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) (a) Meetings shall be convened by the Chief Executive Officer in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine; in case of the Board.

(b) Meetings shall be convened by the Chairperson shall be held at such times and such places as the Chairperson shall determine; in case of County Joint Board.
(3) The respective Chairpersons shall preside over all meetings and in the absence of the Chairperson, by a person elected by the Board or County Joint Board as the case may be at the meeting for that purpose.

(4) The respective Chairpersons may at any time convene a special meeting of the Board or County Fund 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.

(5) Unless six members otherwise agree, at least seven days’ notice of a meeting shall be given to every member of the Board or County Fund Board as the case may be.

2. The quorum of a meeting of the Board or County Fund Board is four out of seven members.

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 person presiding at the meeting shall have a second or casting vote.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

5. (1) If a person is present at a meeting of the Board or County 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 subsection (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 subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes subsection (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.

**SCHEDULE 2**

**MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OR RULES OF EVERY BUSINESS, BUSINESS ASSOCIATION OR FIRM**

1. The name of the Business or Association.

2. The whole of the objects for which the Business or Business Association is to be established.

3. The persons to whom membership is open.

4. The rates of entrance and subscription fees (if any) for membership.

5. The method of suspension or expulsion of members.

6. The titles of officers, trustees and auditors and their terms of office, and the method of their election, appointment, dismissal and suspension.

7. The composition of committees (if any) of the Business or Association, the terms of office of members of such committees and the method of their election, appointment, dismissal and suspension.

8. The Board for and the method of filling vacancies on committees.

9. The frequency of quorums for and dates of the general meetings referred to in section 52 of this Act.

10. The custody and investment of the funds and property of the Business or Association, and the designation of the persons responsible therefore.

11. The purposes for which the funds may be used, and in particular the prohibition of the distribution of funds among members.

12. The inspection of books and list of members of a business or Association, by any member or officer, under section 51 (1) of this Act.

13. The annual or periodical audit of accounts.

14. The formation of branches, if branches may be formed.

15. The manner of amending the name, constitution or rules of the Business or Association.
(3) The respective Chairpersons shall preside over all meetings and in the absence of the Chairperson, by a person elected by the Board or County Joint Board as the case may be at the meeting for that purpose.

(4) The respective Chairpersons may at any time convene a special meeting of the Board or County Fund 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.

(5) Unless six members otherwise agree, at least seven days’ notice of a meeting shall be given to every member of the Board or County Fund Board as the case may be.

2. The quorum of a meeting of the Board or County Fund Board is four out of seven members.

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 person presiding at the meeting shall have a second or casting vote.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

5. (1) If a person is present at a meeting of the Board or County 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 subsection (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 subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes subsection (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.

SCHEDULE 2
MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OR RULES OF EVERY BUSINESS, BUSINESS ASSOCIATION OR FIRM

1. The name of the Business or Association.
2. The whole of the objects for which the Business or Business Association is to be established.
3. The persons to whom membership is open.
4. The rates of entrance and subscription fees (if any) for membership.
5. The method of suspension or expulsion of members.
6. The titles of officers, trustees and auditors and their terms of office, and the method of their election, appointment, dismissal and suspension.
7. The composition of committees (if any) of the Business or Association, the terms of office of members of such committees and the method of their election, appointment, dismissal and suspension.
8. The Board for and the method of filling vacancies on committees.
9. The frequency of quorums for and dates of the general meetings referred to in section 52 of this Act.
10. The custody and investment of the funds and property of the Business or Association, and the designation of the persons responsible therefore.
11. The purposes for which the funds may be used, and in particular the prohibition of the distribution of funds among members.
12. The inspection of books and list of members of a business or Association, by any member or officer, under section 51 (1) of this Act.
13. The annual or periodical audit of accounts.
14. The formation of branches, if branches may be formed.
15. The manner of amending the name, constitution or rules of the Business or Association.
MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legal framework for the promotion, development and regulation of micro and small enterprises. Currently, there is no legal regime which is specifically tailored to regulate these enterprises, despite the fact that these enterprises play a significant role in the economic development of the County as a main source of employment for a significant proportion of the population of Marsabit County.

Part I Contains preliminary provisions

Part II contains provisions on the regulation of micro and small enterprises. It among other things provide for the Licensing of the enterprises, laying down the process for such Licensing, and providing for the office of County Registrar for Business Development purpose. It provides conditions under which Licensing may be refused or cancelled, and for appeal against such refusal or cancellation. It also lays down the manner in which the enterprises are to be managed and requires such enterprises to have a constitution or rules governing them as a pre-condition for Licensing. Under this Part, enterprises are obliged to keep proper books of their accounts, which are subject to periodic inspection. The enterprises are also required to make periodic returns to the Registrar.

Part III provides for the establishment of the County Enterprise Fund Board as a body corporate meant to oversee the development of micro and small enterprises sector. The Board is vested with the responsibility of formulating the requisite policies for the sector and operationalization of the fund.

Part IV contains financial provisions

Part V contains provisions on the development and promotion of micro and small enterprises. It among other things provide for the building of capacity of the enterprises, development of infrastructure such as markets and juakali shades, and provision of marketing services for MSEs. This Part also provides for the establishment of the Business Development Fund, whose objective is to provide funding to various aspects of micro and small enterprises.

Part VII contains miscellaneous provisions

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 29th May, 2014.

SULEIMAN KHALIF,
Leader of Majority.
MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legal framework for the promotion, development and regulation of micro and small enterprises. Currently, there is no legal regime which is specifically tailored to regulate these enterprises, despite the fact that these enterprises play a significant role in the economic development of the County as a main source of employment for a significant proportion of the population of Marsabit County.

Part I Contains preliminary provisions

Part II contains provisions on the regulation of micro and small enterprises. It among other things provide for the Licensing of the enterprises, laying down the process for such Licensing, and providing for the office of County Registrar for Business Development purpose. It provides conditions under which Licensing may be refused or cancelled, and for appeal against such refusal or cancellation. It also lays down the manner in which the enterprises are to be managed and requires such enterprises to have a constitution or rules governing them as a pre-condition for Licensing. Under this Part, enterprises are obliged to keep proper books of their accounts, which are subject to periodic inspection. The enterprises are also required to make periodic returns to the Registrar.

Part III provides for the establishment of the County Enterprise Fund Board as a body corporate meant to oversee the development of micro and small enterprises sector. The Board is vested with the responsibility of formulating the requisite policies for the sector and operationalization of the fund.

Part IV contains financial provisions

Part V contains provisions on the development and promotion of micro and small enterprises. It among other things provide for the building of capacity of the enterprises, development of infrastructure such as markets and juakali shades, and provision of marketing services for MSEs. This Part also provides for the establishment of the Business Development Fund, whose objective is to provide funding to various aspects of micro and small enterprises.

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