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NYANDARUA COUNTY BILLS, 2019

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THE NYANDARUA COUNTY TRADE DEVELOPMENT AND INVESTMENT AUTHORITY BILL, 2019

A Bill for

AN ACT of the Nyandarua County Assembly to establish the Nyandarua County Trade Development and Investment Authority, to provide for trade development, to provide for implementation and coordination of county investment and for connected purposes

ENACTED by the Nyandarua County Assembly as follows—

PART I—PRELIMINARY

Short title and commencement

1 This Act may be cited as the Nyandarua County Trade Development and Investment Authority Act, 2019 and shall come into operation upon publication in the Gazette

Interpretation

In this Act—

“Authority” means the Nyandarua County Trade Development and Investment Authority established under section 5,

“agribusiness” means any business venture, undertaking, service, trade which is agricultural based or related,

“Board” means the Board of the Authority established under section 8

“chief officer” means the chief officer responsible for matters related to trade,

“Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution of Kenya, 2010,

“County Executive Member” means the County Executive Committee Member responsible for matters relating to finance,

“Fund” means the Nyandarua County Trade Development and Investment Fund established under section 26,

“Investment” means the endowment of capital by an investor, for purposes of acquiring, expansion, restructuring, improving of a business enterprises,
"Managing Director" means the Managing Director of the Authority appointed under section 15,

"micro enterprise" means a firm, trade, service, industry or a business activity whose annual turnover does not exceed five hundred thousand shillings and employs less than ten people,

"person" has the meaning assigned to it in Article 260 of the Constitution of Kenya, 2010,

"small enterprise" means a firm, trade, service, industry or a business activity whose annual turnover ranges between five hundred thousand and five million shillings and employs between ten and fifty people,

"subsidiary" means a company or corporation wholly or otherwise owned by the Nyandarua County Development and Investment Authority,

"youth" has the meaning assigned to it in Article 260 of the Constitution of Kenya, 2010

Object of the Act

The object of this Act is to—

(a) provide for the legal and institutional framework for trade development and promotion and coordination of county investments,

(b) promote trade development and implementation and coordination of county investment for purposes of enhancing county revenue base and improvement of county residents livelihoods,

(c) enhance financial and economic prudence in the county government investments,

(d) provide a framework for provision of subsidized credit facilities to micro, small enterprises and agribusinesses to promote enterprise development and economic growth, and

(e) enable the county government to undertake public private partnerships, joint ventures, aimed at achieving robust investment schemes by the county government

Guiding principles

In fulfilment of its mandate, the Authority shall observe and uphold the national values and principles of governance set out in Article 6(3), Article 10, the Bill of Rights enshrined in Chapter Four, the values and principles of Public Service set out in Article 232(1) of the Constitution and for the avoidance of doubt, shall ensure —
(a) prudence in financial and investment management,
(b) value for money is achieved in every investment,
(c) adherence to the County Government Social Economic Agenda,
(d) economic and industrial growth,
(e) competitiveness in approach to business, and
(f) financial sustainability

PART II—ESTABLISHMENT OF THE NYANDARUA COUNTY TRADE DEVELOPMENT AND INVESTMENT AUTHORITY

Establishment of the Authority

5 (1) There is established the Nyandarua County Trade Development and Investment Authority

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

(a) suing and being sued,
(b) acquiring, holding, charging, investing and disposing of movable and immovable,
(c) borrowing, lending money or making investments,
(d) property, and enter into contracts, and
(e) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate

Powers of the Authority

6 (1) The Authority shall have the power to do all the things necessary for the performance of its functions under this Act or any other written law

(2) Despite the generality of subsection (1), the Authority shall have the power to—

(a) partner with the public or private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Authority through concession or other contractual arrangements pursuant to the provisions of the Public-Private Partnership Act (No 15 of 2013),
(b) enter into partnership arrangements with public or private bodies as it deems fit with regard to the establishment, implementation, monitoring and financing of trade development or investment programmes,

(c) receive or administer funds donated or entrusted to the Authority by any agency or organization for any purpose relating to trade development or investment,

(d) invest any surplus or profit for the performance of its functions, and

(e) undertake any task or enter into any transaction which, in the opinion of the Board, is necessary to ensure the proper performance of its functions

Functions of the Authority

7 The Authority shall—

(a) promote trade development and implement and coordinate county investments,

(b) advise the County Executive Committee on policies, programs and plans to be adopted in order to promote trade and investments in the County,

(c) initiate, assist and aide expansion of existing economic or industrial ventures within the county,

(d) facilitate accelerated growth of existing economic and industrial ventures through provision of capital or knowledge,

(e) initiate, assist and aid inception of new economic and industrial ventures in a bid to turn around the economic power of the residents of the county,

(f) undertake investment initiative for the county with a business or social-economic purpose,

(g) identify strategic investment opportunities for the benefit of the county,

(h) undertake business ventures solely or in partnership with other entities or persons for the benefit of the county,

(i) promote local economic growth and job creation,

(j) facilitate investors from within or outside the county to establish investments in the county,
(k) act as the focal agency for investment promotion and facilitation in the County,

(l) engaging in activities that attract donor funding aimed at boosting economic and industrial growth within the County, and

(m) carrying out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the County Executive Committee

**Board of the Authority**

8 (1) The Board shall be responsible for the management of the Authority

(2) The Board shall comprise of—

(a) a non-executive chairperson who shall be competitively recruited and appointed by the Governor with the approval of the county assembly,

(b) the Chief Officer responsible for Finance,

(c) the Chief Officer responsible for Trade,

(d) four professionals who shall be competitively recruited and appointed by the County Executive Member with the approval of the County Assembly,

(e) the Managing Director who shall be an Ex Officio member, and

(f) the Corporation secretary who shall be an Ex Official member and secretary to the Board

(3) In appointing the members under section 8(2)(d) the County Executive Member shall—

(a) ensure that not more than two-thirds of the members are of the same gender,

(b) observe the principle of regional and ethnic balance, and

(c) have due regard to the principle of fair representation for persons with disabilities

(4) A member of the Board shall be paid such allowances as the County Executive Member may in consultation with the Commission determine

(5) A member of the Board shall serve on a part-time basis
(6) A member of the Board appointed under subsection (2) (a) and (d) shall serve for a term of five years, renewable once and upon satisfactory performance of his or her duties

(7) The appointing authority shall ensure that the members of the Board shall retire on rotation, in a manner that shall ensure that not more than two thirds of the members retire at the same time

Qualification for appointment of members of the Board

9  (1) A person shall be qualified for appointment as chairperson if such person—

(a) is a Kenyan Citizen
(b) holds a degree from a university recognized in Kenya,
(c) has experience of at least ten (10) years in senior level management in public or private sector, and
(d) meets the requirements of Chapter Six of the Constitution of Kenya 2010

(2) A person shall be qualified for appointment as a member under Section 8 (2) (d) if such person—

(a) is a Kenyan Citizen,
(b) holds a degree from a university recognized in Kenya,
(c) has experience of at least ten (5) years in senior level management in public or private sector, and
(d) meets the requirements of Chapter Six of the Constitution of Kenya, 2010

Disqualification

10  (1) A person shall not qualify for appointment as chairperson or member of the Board if such a person is—

(a) a state officer,
(b) a member of a governing board of a political party,
(c) is adjudged bankrupt,
(d) has previously, within the last three years, been convicted for any offence and imprisoned for a period of more than six months, or
(e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board
The office of the chairperson or a member of the Board shall become vacant if the holder —

(a) dies,

(b) resigns from office by notice in writing addressed to the appointing authority,

(c) is convicted of a criminal offence and sentenced to an imprisonment term of six months or more,

(d) term of office expires,

(e) is absent from three consecutive meetings of the Board without good cause, or

(f) is removed from office for any of the following grounds —
   (i) violation of the Constitution or any other written law,
   (ii) gross misconduct or misbehavior,
   (iii) inability to perform functions of the office arising out of physical or mental infirmity,
   (iv) incompetence or neglect of duty, or
   (v) bankruptcy

Removal from office

12 (1) A person desiring the removal of chairperson or a member of the Board on any ground specified in section 11 (f) may present a complaint to the County Public Service Board setting out the alleged facts constituting that ground

(2) Subject to Article 47 of the Constitution, the County Public Service Board shall consider the complaint and, if it is satisfied that it discloses a ground under section 14, shall—

(a) investigate the matter expeditiously,

(b) report on the facts, and

(c) make its recommendation to the Governor or County Executive Member

(3) Where the County Public Service Board finds that there is no case to answer, the Board shall dismiss the petition and inform the petitioner in writing the grounds for dismissal
(4) The Governor or the County Executive Member shall, within twenty one days of receipt of the recommendation under subsection (2), act in accordance with the recommendation.

(5) The Governor or the County Executive Member may adopt, partially or wholly or reject the recommendations made under subsection (2) and where the recommendations are rejected or partially adopted, the Governor or the County Executive Member shall give reasons for such rejection or partial adoption.

**Conduct of the business and affairs of the Board**

13 (1) The business and affairs of the Board shall be conducted in accordance with the Second Schedule.

(2) Except as provided for in this Act, the Board shall regulate its own procedure.

(3) The Board may permit any other person to attend its meetings and participate in its deliberations but that person shall not participate in the making of any of its decisions.

**Committees of the Board**

14 (1) The Board may from time to time establish committees for the better carrying out of its functions.

(2) The Board may co-opt into the membership of committees established under sub section (1) a person whose knowledge and skills are necessary for the functions of the Board.

(3) The Board may by resolution either generally or in any particular case delegate to any Committee of the Board or to any member, officer, employee or agent of the Board the exercise of any of the powers, functions or duties of the Board.

**Managing Director**

15 (1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Managing Director to the Authority.

(2) A person shall be qualified for appointment as the Managing Director to the Authority if the person—

(a) is a citizen of Kenya,

(b) holds a postgraduate degree from a university recognized in Kenya,

(c) has had at least five years proven experience at management level,
(d) has experience in any of the following fields—

(i) ethics and governance,
(ii) law,
(iii) economics,
(iv) social studies,
(v) research, or
(vi) corporate management, and

(e) meets the requirements of Chapter Six of the Constitution

(3) The Managing Director shall serve on such terms and conditions as the Board may determine

(4) The Managing Director shall hold office for a term of three years but may be eligible for re-appointment

(5) The Managing Director shall, in the performance of the functions and duties of office, be responsible to the Board

(6) The Managing Director shall—

(a) be the Chief Executive Officer of the Authority,
(b) be the accounting officer of the Authority,
(c) be responsible for—

(i) carrying into effect the decisions of the Board,
(ii) day-to-day administration and management of the affairs of the Authority,
(iii) supervision of the staff of the Authority, and
(iv) perform such other duties as may be assigned by the Board

**Removal from office of the Managing Director**

16 (1) The Managing Director may be removed from office by the Board in accordance with the terms and condition of service, for—

(a) inability to perform functions of the office arising out of physical or mental infirmity,
(b) gross misconduct or misbehaviour,
(c) incompetence or negligence of duty,
(d) violation of the Constitution and any other written law, or
(e) any other grounds specified in the terms and conditions of service of managing director

(2) Where the question of the removal of the Managing Director arises, the Board shall—

(a) inform the Managing Director in writing of the reasons for the intended removal, and

(b) give the Managing Director the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution

Corporation secretary

17 (1) The Board shall competitively recruit a Corporation Secretary who shall be responsible for—

(a) preparation of statutory documents,
(b) legal compliance,
(c) provision of legal support on maintenance of statutory internal control standards,
(d) filing of statutory returns to all relevant offices,
(e) offering technical legal services to the board,
(f) providing basic legal support and expertise, and
(g) any other relevant duty as may be necessary to the corporation

(2) A person shall qualify for appointment as a Corporation Secretary if such person—

(a) possess a Bachelor’s Degree in Law from a university recognized in Kenya,
(b) is an Advocate of the High Court of Kenya,
(c) is a Certified Public Secretary of Kenya, CPS (K) possessing a minimum five years relevant professional experience,
(d) is a member of the relevant professional body, and
(e) meets the requirements of Chapter six of the Constitution of Kenya

Removal from office of the Corporation secretary

18 (1) The Corporation Secretary may be removed from office by the Board in accordance with the terms and conditions of service, for—
(a) inability to perform functions of the office arising out of physical or mental infirmity,
(b) gross misconduct or misbehaviour,
(c) incompetence or negligence of duty,
(d) violation of the Constitution and any other written law, or
(e) any other grounds specified in the terms and conditions of service of Corporation Secretary

(2) Where the question of the removal of the Corporation Secretary under subsection (1) arises, the Board shall—

(a) inform the Corporation Secretary in writing of the reasons for the intended removal, and

(b) give the Corporation Secretary the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution

Oath of office

19 Before assuming office, the chairperson and members of the Board shall take and subscribe to an oath of office as prescribed under the First Schedule

Staff of the Authority

20 (1) There shall be a secretariat of the Authority

(2) The secretariat shall comprise of—

(a) such professional, technical and administrative officers and support staff, as may be appointed by the Board, in consultation with the County Public Service Board, in the discharge of its functions under this Act, and

(b) such public officers as may be seconded by the County Public Service Board to the Authority upon the request

(3) A public officer seconded to the Authority shall, during the period of secondment, be deemed to be an officer of the Authority and shall be subject only to the direction and control of the Authority

(4) The Authority shall, in the appointment of employees, ensure—

(a) equalization of opportunity for persons with disabilities,

(b) equalization of opportunities for the youth,

(c) that not more than two thirds of its staff are of the same gender, and
(d) that the appointment reflect ethnic and regional diversity of the people of Kenya

Seal of the Authority

21 (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Managing Director

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by resolution of the Board

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be admissible in evidence in the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof

Code of conduct

22 (1) The members and the employees of the Authority shall subscribe to the code of conduct set out in the Third Schedule

(2) The Authority may make further regulations prescribing the code of conduct for its members and employees

Conflict of interest

23 (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person or that person’s spouse is 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 and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question connected to such matter

(2) The disclosure of interest shall be recorded in the minutes of the meeting at which it is made

(3) The chairperson, member, or staff of the Authority shall not transact any business or trade with the Authority

(4) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment

Protection from liability

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

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation to any persons for any injury to him, his property or to any of its interest caused by the exercise of any power conferred by this Act, or by the failure, whether wholly or partially, of any works

PART III — PROVISIONS RELATION TO TRADE DEVELOPMENT AND COUNTY INVESTMENT

Trade Development

In this Act, trade development includes—

(a) provision of subsidized credit facilities to persons who operate micro, small enterprises and agribusinesses to promote enterprise development and economic growth,

(b) marketing and promotion of county products,

(c) establishing subsidiaries, holding entities or joint ventures for undertaking any business ventures for the purposes of promoting local market of county products and creation of employment,

(d) entering into partnerships with private or public entities for promotion of trade in the county, and

(e) any other act performed by the Authority in fulfilment of its mandate under this Act

Establishment of the Fund

(1) There is established the Nyandarua County Trade Development and Investment Fund which shall be a financing mechanism for purposes of this Act

(2) The Fund shall be a revolving fund vested in the Department responsible for trade

(3) There shall be paid into the Fund—

(a) money appropriated by the County Assembly,

(b) money received in form of donations, endowments, grants and gifts,

(c) monies advanced as capital and proceeds arising from interest on any loan granted from the fund, and

(d) any other lawful source
(4) The Fund shall be managed by the Board

(5) In managing the Fund, the Board shall—

(a) determine the composition of the Fund,

(b) set strategic directions for applications of the Fund,

(c) define eligibility criteria for the Fund to finance trade development or investment programmes and projects,

(d) set out procedures for disbursement, recovery and repayment of credit facilities including interest,

(e) set out procedures to ensure gender and intergenerational equity in access to monies from the Fund,

(f) set out procedures, criteria and eligibility for funding research institutions, private, public, civil society research, development and investment ventures that enhance the livelihoods of the residents of the county, and

(g) set out other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting for trade development finance and monitoring and evaluation procedures through regulations which shall be subjected to public participation and approval by the County Assembly

(6) The Board shall approve request for funding and make funding allocation decisions

(7) The Managing Director shall be the administrator of the Fund

(8) In administering the Fund, the Managing Director shall—

(a) prepare a budget and such plans for better administration of the Fund to be approved by the County Executive Member,

(b) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Board,

(c) provide mechanisms for daily operations of the Fund,

(d) process financing applications from eligible applicants for approval by the Board,

(e) ensure quality assurance in execution of the mandate of the Fund,

(f) undertake resource mobilization from various sources,
(g) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the County Treasury may from time to time direct, and

(h) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law

(8) The Fund shall be applied to—

(a) provide grants or credit facilities to business, cooperative societies, industry, and other stakeholders for development of innovative projects that contribute to trade development in the County,

(b) finance, through grants and loans the provision of technical assistance through trainings and skill development related to enterprise and business development,

(c) finance research and innovation, in trade development, investment and policy formulation,

(d) facilitating technology acquisition, adoption and utilization, and

(e) promoting agribusiness and other related businesses

(9) The County Executive Member shall, in consultation with the Authority, make regulations setting out procedures and criteria on access, utilization, and monitoring of the use of funds by various state, non-state and private sector actors, to enhance integrity and to eliminate corrupt practices

(10) The activities of the Board shall be financed through a vote in the estimates or revenue and expenditure of the Department

Eligibility for accessing the fund

27 (1) A person is eligible for credit facility under this Act if the person is—

(a) a youth, or

(b) a person living with disability, and

operates a trade or intending to start a business within the county

(2) A cooperative society is eligible for credit facility under this Act, if the cooperative society —

(a) is registered with the department established under section 146 of the County Governments Act responsible for matters relating to cooperative societies, and
(b) meets the prescribed criteria

Accessing the fund

28 (1) A person who qualifies for funding under Section 27, may apply for a credit facility to the Board in the form prescribed

(2) An application for a credit facility may be made subject to the prescribed conditions, such conditions shall not be prohibitive to accessing the funds by the intended beneficiaries

(3) The County Executive Member shall, in consultation with the Board prescribe the limits of amounts that may be disbursed as credit facility to an applicant

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

(a) approve the loan application, or

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

(5) Notwithstanding subsection (2), a loan shall not be disbursed to an applicant making an application for start-up capital unless the applicant has undergone the prescribed training

Loan repayment

29 (1) The Board shall, in consultation with the County Executive Member establish loan repayment conditions

(2) The Board in consultation with the County Executive Member shall set the interest rates chargeable for a loan disbursed under this Act

(3) In establishing the amount repayable by an applicant, the Board may charge a fee for insuring the loan

Utilization of loan

30 (1) A loan granted under this Act shall only be utilized for financing an enterprise or business undertaking approved by the Board at the time of application for loan

(2) A person who utilizes the loan granted for any other purpose shall be disqualified from accessing credit facility under this Act

County Investment

Investment Powers

31 (1) Subject to any written law, the Authority shall have powers to—
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(a) establish subsidiaries, holding entities or joint ventures for undertaking any business ventures for the purposes of realizing its objectives, and

(b) invest in property or real assets, bonds, securities, bank deposits, trust funds, Treasury Acts or any investment venture approved by the County Treasury

Raising capital

32 (1) Subject to the approval of the County Executive Committee, and where applicable the County Assembly, the Authority may raise capital by way of—

(a) loans,

(b) floating bonds,

(c) shares,

(d) receiving grants,

(e) sale of assets or property,

(f) reinvestment of surplus,

(g) appropriations from the County Assembly, or

(h) any other way as may be approved by County Treasury

(2) The Authority shall not borrow money by way of loans or float any bonds or shares unless such borrowing is a capital investments

(3) Despite subsection (2), the Authority may borrow short-term loans for the purposes of maintaining sufficient cash flow in accordance with Public Financial Management Act, 2012

Investment Strategy

33 (1) The Board shall prepare a five year Investment Strategy for the Authority which shall be forwarded to the County Executive Committee for approval

(2) The first Investment Strategy shall be developed within four months after the Board is constituted

(3) The Board shall conduct at every second and fourth year of every five year Investment Strategy a mid-term review, which report shall be presented to the County Executive Committee for review and approval

(3) The County Executive Member shall, within fourteen days of the approval of the Investment Strategy by the County Executive Committee, transmit it to the Clerk of the County Assembly for tabling before the County Assembly for consideration and approval
(4) The investment strategy shall provide, among others, for—
   
   (a) source of investment capital,
   
   (b) targeted investment opportunities,
   
   (c) investment portfolio,
   
   (d) expected return on capital or investment,
   
   (e) specific investment projects and their respective projects appraisals including rate of return on investment or capital employed,
   
   (f) estimated cost of the investments,
   
   (g) debt management strategy,
   
   (h) Public-Private Partnership plans, and
   
   (i) any other matter as the County Executive Member may prescribe

(5) The Authority shall not undertake any investment unless it is in accordance with the investment strategy

(6) The Authority may review the investment strategy after each year in order to align it with prevailing market and investment trends

(7) The Authority shall prepare annual plans for implementing the investment strategy which shall be forwarded to the County Executive Committee approval and for onward transmission to the County Assembly for approval by December each year

**Investment, project and financial analysis**

   **34** The Authority shall not undertake any investment project or program without conducting an appraisal and financial analysis in accordance with the prescribed regulations

**Investment Sustainability**

   **35** (1) The Authority shall institute measures to ensure that its operations and investment ventures—
   
   (a) are sustainable and profitable, and
   
   (b) competitive

   (2) The Authority shall undertake an assessment after every two years to measure the sustainability, profitability and competitiveness of each investment venture
Despite subsection (2), the County Executive Member in consultation with the Board may require at any time the Authority to undertake the assessment in relation to any investment venture where the County Executive Member is of the opinion that the venture does not meet the required threshold for sustainability, profitability and competitiveness.

The County Executive Member may in consultation with the Board require the assessment to be undertaken by an independent person or entity.

After conducting the assessment and in the opinion of the Board, an investment venture does not meet the required threshold for sustainability, profitability or competitiveness, the Board may —

(a) restructure the investment,
(b) merge the investment with other investments, or
(c) terminate the investment by way of sale, disposal, transfer or liquidation where the investment was carried out by a subsidiary as the sole business.

Financial Sustainability

The Authority shall maintain the prescribed—

(a) asset base to enable it realize its objectives,
(b) liquidity ratios,
(c) debt service plan,
(d) performance of individual projects plans,
(e) expansion plans and strategies, and
(f) any other information that the executive member may from time to time prescribe.

Dividends policy

The Board shall, in consultation with the County Executive Committee establish a dividend policy, which shall be reviewed annually.

The dividend policy shall stipulate among others—

(a) the prevailing business conditions under which dividends may be paid out,
(b) minimum percentage of annual dividend payout to the County Government, and
(c) any other matter as the County Executive Member may prescribe.
PART IV—FINANCIAL PROVISIONS

Funds of the Authority

38 (1) The funds of the Authority shall consist of—

(a) monies allocated by the County Assembly for purposes of the Authority,

(b) any grants, gifts, donations or other endowments given to the Authority, and

(c) such funds as may vest in or accrue to the Authority in the performance of its functions under this Act or any other written law

(2) Any funds donated or lent to, or gift made to the Authority shall be disclosed to the County Assembly and made public before use

Annual estimates

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

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

(a) payment of remuneration in respect of the members and staff of the Authority,

(b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Authority,

(c) maintenance of the buildings and grounds of the Authority,

(d) funding of training, research and development of activities of the Authority,

(e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Authority may think fit, and

(f) any other expenditure necessary or purposes of this Act

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the County Executive Member for tabling in County Assembly
Financial year of the Authority

40 The financial year of the Authority shall be—
(a) the period commencing on the day on which this Act comes into operation and ending on the thirtieth day of June next following,
(b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year

Accounts and audit

41 (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Authority

(2) 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 Authority in respect of that year together with a—
(a) statement of the income and expenditure of the Authority during that year, and
(b) statement of the assets and liabilities of the Authority on the last day of that financial year

(3) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit

Annual report

42 (1) The Authority shall, at the end of each financial year cause an annual report to be prepared

(2) The Authority shall submit the annual report to the County Executive Member and the County Assembly three months after the end of the year to which it relates

(3) The annual report shall contain in respect of the year to which it relates—
(a) the financial statements of the Authority,
(b) a description of the activities of the Authority,
(c) such other statistical information as the Authority may consider appropriate relating to the Authority’s functions,
(d) any recommendations made by the Authority to departments or any person and the action taken,
(e) the impact of the exercise of any of its mandate or function,
(f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law,
and

(g) any other information relating to its functions that the Authority considers necessary

(4) The annual report shall be published and publicized in such other manner as the Authority may determine

PART V — MISCELLANEOUS PROVISIONS

Public Private Partnership (No 15 of 2013)

43 The Authority may enter into a public private partnership agreement with any person for trade development or promotion of investment in the County

Disclosure of information

44 (1) Subject to Article 35 of the Constitution, the Authority shall publish and publicize any important information within its mandate affecting the County

(2) A request for information by any citizen shall be—

(a) addressed to the Managing Director or such other person as the Authority may for that purpose designate, and

(b) dealt with in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information

Offences and penalties

45 (1) Any person who contravenes the provisions of this Act commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding two years or to both

(2) Any person who—

(a) in filing a loan application form, knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his or her request for a loan, or

(b) being required to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause, or

is granted a loan based on false information, shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a penalty in form of a
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fine for an amount not exceeding Kenya shillings thirty thousand or imprisonment for a term not exceeding six months, or both

**Regulations**

46 (1) The County Executive Member shall, in consultation with the Board make Regulations generally for the better carrying out of the objects of this Act

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

(a) the loan application forms,
(b) the application procedure for accessing the Fund,
(c) conditions imposed on accessing and repayment of the loans including the collateral for the loan,
(d) guidelines for undertaking investment or project appraisal,
(e) training to be offered to persons applying for funding under this Act
(f) matters related to dividend policy, and
(g) matters related to investment strategy

**Consequential amendment**

47 The Nyadaruwa County Cooperative Societies Act, 2017 is amended—

(a) in section 2 by deleting the definition of the word ‘Fund’ and replacing therefor with the following new definition—

“Fund” means the Nyandama County Trade Development and Investment Fund established under section 26 of the Nyandama County Trade and Investment Act, 2019,’

(b) in section 3 by—

(i) adding the word ‘and’ after the mark ‘,’ appearing at the end of paragraph (a),
(ii) replacing the expression ‘, and’ appearing at the end of paragraph (b) with the mark ‘ ’, and
(iii) deleting paragraph (c)

(c) by deleting the following sections—

(i) 11,
(ii) 12,
(iii) 13,
(iv) 14,
(v) 15, and
(vi) 16

Repeal

48 The Nyandarua County Trade Fund Act, 2014 is repealed
FIRST SCHEDULE
[Section 19]
OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/MEMBER/MANAGING DIRECTOR/SECRETARY

I having been appointed (the Chairperson/member Managing Director or secretary to) the Nyandarua County Trade Development and Investment Authority do swear/solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic, that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice

(SO HELP ME GOD)

Sworn/Declared by the said

Before me this day of

Judge, High Court of Kenya

SECOND SCHEDULE
[Section 13]
CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1 Meetings

The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year

2 Election of vice-chairperson

At the first meeting, the Board shall elect a vice-chairperson amongst their number and regard shall be taken to ensure that the chairperson and vice-chairperson shall be of opposite gender
3 **Time and place of meetings**

A meeting of the Board shall be held on such date and at such time and place as the Board may determine.

4 **Special meetings**

The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.

5 **Quorum**

The quorum for the conduct of business at a meeting of the Board shall be any three members excluding ex officio members of the Board.

6 **Voting**

The Chairperson shall preside at every meeting of the Board at which he or she is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

7 **Decisions of the Board**

Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members present and voting at the meeting.

8 **Records of the Board**

The Board shall keep a record of the proceedings of every meeting of the Board.

9 **Validity of proceedings**

Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

10 **Signification of instruments and decisions of the Board**

Unless otherwise provided by or under any law, all instruments made by and decisions of the Board shall be signified under the hand of the Chairperson.
THIRD SCHEDULE

[Section 22 ]

CODE OF CONDUCT FOR MEMBERS OF AND STAFF OF THE AUTHORITY

Impartiality and independence of members and employees

1 The chairperson, every member and member of staff of the Authority shall impartially and independently perform his or her functions in good faith and without fear, favour or prejudice, and without influence from—

(a) the National or County Government,
(b) any public officer,
(c) any political party,
(d) any candidate participating in an election, or
(e) any other person or authority

Independence from political or public office

2 The chairperson, member or member of staff of the Authority shall not, during the tenure of office, be eligible for—

(a) appointment or nomination to a political office, or
(b) appointment to another public office

(2) A member of the Board may not—

(a) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Authority,
(b) make private use of or profit from any confidential information gained as a result of being a member of the Board, or
(c) divulge any information to any third party, save in the course of official duty or in conformity with Article 35 of the Constitution

Conflict of interests

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

(2) The chairperson, member or member of staff whose personal interest conflicts with their official duties shall—

(a) declare the personal interests to their supervisor or other appropriate person or body in writing and comply with any directions given to avoid the conflict, and

(b) refrain from participating in any deliberations with respect to the matter.

Professionalism

4 The chairperson, member or member of staff of the Authority shall—

(a) perform their duties in a manner that promotes and maintains public confidence in the Authority,

(b) treat the public and colleagues with courtesy and respect,

(c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law, and

(d) respect the rights and freedom of all persons that he or she may interact with.

Improper enrichment

5 The chairperson, member or member of staff of the Authority shall not—

(a) use their office or organization to improperly enrich themselves or others,

(b) accept or request gifts or personal favours from any person who may have a commercial interest with the Authority or any other interest that may be affected by the normal business of the Authority, or

(c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others.

Integrity in private affairs

6 The chairperson, member or member of staff of the Authority shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Authority as a whole and shall—
(a) not evade paying taxes,
(b) not neglect their financial obligations,
(c) submit an annual declaration of their income, assets and liabilities to the Authority responsible for such declarations from public officers,
(d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Authority, and
(e) not preside over or play a central role in the organization of a fundraising activity

Sexual harassment

7 (1) The chairperson, member or member of staff of the Authority shall not sexually harass a member of the public or colleague

(2) Sexual harassment includes—

(a) making a request or exerting pressure for sexual activity or favours,
(b) making intentional or careless physical contact that is sexual in nature,
(c) making gestures, jokes or comments, including innuendoes regarding another person’s sexuality, or
(d) committing any other act that is classified as sexual harassment under the Sexual Offences Act, 2006 (No 3 of 2006)

Favouritism

8 The chairperson, member or member of staff of the Authority shall not practice favouritism on the grounds of tribe, race, kin, culture, sex or acquaintance or otherwise in performance of their duties

Privileged information and security of interests of the State

9 The chairperson, member or member of staff of the Authority shall—

(a) not act for foreigners in a manner detrimental to the security interest of Kenya, and
(b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure
Application of Act No 4 of 2003

10 This Code is in addition to the provisions of the Public Officers Ethics Act, 2003 (No 4 of 2003) and where there is a conflict between the Code and the Act, the provisions of the Act shall prevail

Breach of code

11 Any breach of the Code by a member or officer of the Authority shall be treated as gross misconduct
MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to establish the Nyandarua County Trade Development and Investment Authority, to provide for trade development, implementation and coordination of county investment, the legal and institutional framework for trade development and promotion and coordination of county investments, to promote trade development and implementation and coordination of county investment for purposes of enhancing county revenue base and improvement of county residents livelihoods, to enhance financial and economic prudence in the county government investments, to provide a framework for provision of subsidized credit facilities to micro, small enterprises and agribusinesses to promote enterprise development and economic growth, and enable the county government to undertake public private partnerships, joint ventures, aimed at achieving robust investment schemes by the county government.

Part I (Clauses 1-4) Contains preliminary provisions

Part II (Clause 5-24) establishes the Nyandarua County Trade Development and Investment Authority. Contains provisions for the powers and functions of the Authority. This part contains provisions on the establishment of the Board of the Authority, qualification for appointment of members of the Board, disqualification of the members of the board, the managing director as well as Corporation secretary and Staff of the Authority.

Part III (25 – 37) provides for the provisions in relation to trade development and county investment. There is established the Trade Fund with provisions on the eligibility for accessing the Trade Fund, application for the Fund, Loan Repayment and utilization of Loan.

This part also contains provisions for county investment, investment powers, investment strategy, investment, project and financial analysis, investment sustainability and the dividend policy.

Part IV (38-42) provides for financial provisions, establishes a funds of the Authority, annual estimates, accounts and audit as well as annual reporting.

Part V (43-48) provides for miscellaneous provisions, Public Private Partnership. This part provides for offences and penalty under the Act. There are provisions for making of regulations by the County Executive Member and the Authority. Clause 47 provides for consequential amendments to the Nyandarua County Cooperatives.
Societies Act, 2017 while clause 48 provides for repeal of the Nyandarua County Trade Fund Act, 2016

First schedule provides for oath/affirmation of the office of chairperson/member/managing director/corporation secretary

Second schedule provides for conduct of business and affairs of the authority  Third schedule provides for the code of conduct for members of and staff of the authority

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill provides for delegation of legislative powers for the making of regulations  The Bill does not limit fundamental rights and freedoms

Statement that the Bill concerns county governments

The Bill may concern County Governments in terms of Article 110 (1)(a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution and section 21 of the County Government Act

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the annual estimates

Dated the 28th October, 2019

SULEIMAN KIHIKA KIMANI,
Chairperson, Finance and Economic Planning Committee