

**THE COUNTY GOVERNMENT OF SIAYA
PUBLIC FINANCE
(SIAYA COUNTY CO-OPERATIVE DEVELOPMENT FUND BILL 2019)**

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The Siaya County Co-operative Development Fund Bill, 2019

THE CO-OPERATIVE DEVELOPMENT FUND , BILL, 2019
A Bill for an ACT of the County Assembly of Siaya to establish a Development Fund forthe cooperative organizations in Siaya County by providing affordable loans to cooperative organizations that seek to promote the welfare and economic wellbeing of the people of Siaya County and for connected purposes.

ENACTED by the County Assembly of Siaya as follows:-

PART 1 – PRELIMINARY

Citation and commencement

1. This Act may be cited as the Co-operative Development Fund Act, 2019 and shall come to operation on such date as the Members of the Executive Committee, with the concurrence of the Governor, may appoint.

Interpretation	<p>2. In this Act, unless the context otherwise requires: -</p> <p>“Agency” means an entity appointed by the Executive Committee Member responsible for Finance and Planning to administer the Co-operative Development Fund on behalf of the County Government of Siaya.</p> <p>“Applicant” means a co-operative institution operating in Siaya County and which has submitted a loan application form for consideration by the Committee.</p> <p>“Award” a ruling set by the arbitrator in a dispute under this Act</p> <p>“Committee” means the co-operative development fund committee established under section 7 of this Act.</p> <p>“Commissioner” means the Commissioner for Co-operative Development appointed under section 3 of the Co-operative Societies Act Chapter 490 and includes any person on whom any of the powers of the Commissioner have been conferred</p> <p>“Co-operative Organization” means a registered Co-operative society Registered under chapter 490 of the laws of Kenya</p> <p>“Executive Committee Member” means the member of the County Executive Committee responsible for the Co-operative sub-Sector</p> <p>“Fund” means the Fund established under section 3</p> <p>“Governor” means the Governor of Siaya County Government</p> <p>“Loanee” means a co-operative organization whose loan request has been approved and granted; under this Act</p> <p>“SASRA” means Sacco Society Regulatory Authority</p> <p>.</p>
PART 11 – ESTABLISHMENT & ADMINISTRATION OF THE FUND	
Establishment of the fund	<p>3. There is hereby established a Fund to be known as the Co-operative Development Fund. The Administrator of the Fund shall be appointed in accordance with the Public Finance Management Act 2012, as prescribed in section 12 of this Act</p>
Objectives of the Fund	<p>4. The objective and the purpose of the Fund shall be;</p> <p>(a) To provide funds to be used for granting low interest loans to cooperative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed.</p> <p>(b) To provide funds to support, revive and initiate cooperative sub-sector institutions in areas that can have immediate impact to household economy.</p> <p>(c) To attract and facilitate investments in cooperative institutions that have linkages to micro, small and medium enterprises that benefit persons with disability, youth and women groups.</p>

	<p>(d) Provide financial support to cooperative sub-sector institutions that support strategic and high return interventions which directly and indirectly have the potential to trigger growth and sector wide impact.</p> <p>(e) Provide funds to cooperative institutions to facilitate marketing of products and services both in the domestic and the international market.</p> <p>(f) For the attainment of the above objectives, the Committee may do acts and things that are permissible under this Act by doing all such other things as are incidental or consequential to the economic enhancement of the interests of co-operative organizations provided such act is approved by the County Executive member in charge of co-operative sub-Sector.</p>
<p>Guiding Principles of operating the Fund</p>	<p>5. In the exercise of the powers conferred under this Act, the committee shall be guided by the objects and principles of devolved governments as set out in Articles 174 and 175 of the Constitution of Kenya 2010 incorporating the following principles:-</p> <ul style="list-style-type: none"> (a) Public participation and financial inclusiveness (b) Development partners linkages and participation (c) Local ownership and sustainability (d) Good Cooperative governance and accountability
<p>Revenue and expenditure of the Fund</p>	<p>6.(1) There shall be credited to the fund</p> <ul style="list-style-type: none"> (a) Sums of money which may from time to time be voted by the County Assembly for that purpose. (b) Sums which represent the repayment of the capital and interest of any loan ;granted from the Fund (c) Income from any investment made by the fund (d) any sums of money borrowed by the Fund with the approval of the County Assembly and (e) any gifts, donations, grants and endowments made to the Fund. <p>(2) There shall be paid out of the Fund any expenditure approved by the Committee incurred in connection with the administration of the Fund pursuant to section 16 of this Act</p>

PART III ESTABLISHMENT AND FUNCTIONS OF THE COMMITTEE	
Establishment of the Co-operative Development Fund Committee	<p>7 (1) there shall be established a committee to be known as the co-operative Development Fund Committee.</p> <p>(2) the Committee shall;</p> <ul style="list-style-type: none"> (a) be body corporate With perpetual succession (b) Have the power to sue and be sued (c) have a common seal (d) have power to acquire, own, possess and dispose of property and to enter into contracts. <p>(3) Composition of the Committee;</p> <p>The Committee shall consist of:-</p> <ul style="list-style-type: none"> a) the County Chief Officer in the County department for the time being responsible for matters relating to co-operative development or a representative appointed in writing;who shall be the Chairperson of the Committee b) the County Chief Officer in the County department for the time being responsible for Finance and Economic Planning or a representative appointed in writing;who shall be the Treasurer of the Committee c) the County Chief Officer in the County department for the time being responsible for matters relating to Agriculture or a representative appointed in writing; who shall be the Treasurer of the Committee d) the Head of legal services in the county or a representative appointed in writing; e) the County Director for Co-operative Development who shall be the Secretary to the Committee f) The County Director of Trade g) The County Principal Cooperative Officer h) County Cooperative Auditor i) a representative of the Agency appointed under section 13, who shall be an ex officio memberof the Committee. Provided that the representative shall be a senior Management officer of the agency.

<p>Terms of Service of the member of the Committee</p>	<p>8.(1)The members of the Committee may be paid such allowances as the Member of the Executive Committee shall determine in consultation with the County Public Service Board.</p> <p>(2) the Committee shall meet monthly provided that the meetings shall not exceed fifteen meetings in a year</p> <p>(3) any other terms of service not indicated here shall be prescribed by the County public service board as need arises</p>
<p>Functions of</p>	<p>9. The functions of the Committee are to: -</p>

<p>the Committee</p>	<ul style="list-style-type: none"> (a) Receive all the loan application forms, do the requisite appraisals, and generate and approve proposals for submission to the agency for disbursement. (b) Formulate policy guidelines on co-operative sector funding; (c) Ensure that all projects/programmes funded under this Act are consistent with the county's priorities specified in the relevant policy documents; (d) Authorize allocations from the fund; (e) Formulate or approve standards, guidelines and procedures for funding proposals under this Act. (f) Provide oversight in the utilization of the Fund; and (g) Conduct research and gap analysis to ensure continuous performance improvement of the Fund. (h) Assist co-operative organizations, where the Committee considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits (h) Perform any other function as may be conferred on it by this Act or any other written law.
<p>Delegation by the Committee</p>	<p>10. (1) The Committee may establish such sub-committee as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.</p> <p>(2) The Committee may co-opt in to the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performanc of the functions of the sub-committee.</p> <p>(3) The Committee may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.</p>
<p>Conduct of affairs of the business of the committee</p>	<p>11. (1) Subject to subsection (2), the business and affairs of the Committee Shall be conducted in accordance with the First Schedule.</p> <p>(2) Except as provided in the schedule, the Committee may regulate its own procedure.</p>
<p>PART IV – APPOINTMENT OF THE AGENCY</p>	

Appointment of the Agency	12. There shall be an Agency appointed by the Executive Committee Member responsible for Finance and Planning, who shall administer the Co-operative Development Fund on behalf of the County Government of Siaya under agreed terms of service.
Requirement for the appointment of the Agency	13. To be considered for appointment as the Fund’s administrator, the Agency must;- <ul style="list-style-type: none"> (a) Be Deposit taking Sacco licensed by SASRA with at least fifteen years’ experience in Micro finance activities. (b) have a record of non-performing loans portfolio not exceeding 5% (c) have an automated web based software system efficient in credit management among others (d) have qualified staff with high performance records (e) be tax, audit and annual returns compliant (f) have an office in Siaya County.
Functions of the Agency	15. (1) The functions of the Agency are to: - <ul style="list-style-type: none"> (a) Administer the Fund established under section 3 of this Act. (b) Formulate and implement a loan recovery strategy that focuses on safety and efficacy (c) Disburse and recover loans that have been approved by the Committee pursuant to the Policy formulated under Subsection (a) above. (d) Conduct civic education to promote the awareness and understanding of the Fund amongst stake holders. (e) Provide capacity building to, and advise co-operative organizations to ensure the effective use of funds borrowed under this Act through liaison with the Committee. (f) Develop frame work that will ensure an open, transparent and efficient use of funds borrowed under this Act in close liaison with the Committee. (g) Provide technical, financial and legal expertise to the beneficiaries of the Fund; (h) Maintain records of all documentation pertaining to disbursements and recoveries ;and avail quarterly reports of the same to the committee (i) Assist members of the committee in formulating guidelines and standard documentation required under this Act (j) Carry out such other function as may be conferred on it by

	<p>the members of the executive committee under this Act.</p> <p>(2) The Agency shall keep proper books of account i.e.prepare financial accounts and an inventory of any monies allocated to it. Provided that the Executive committee Member shall reserve the right to inspect the agency's records at any time upon giving notice the intension to do so.</p> <p>(3) the agency shall be paid a fee in accordance with the Regulations to be promulgated under this Act.</p>
<p>PART V –FUNDING PROCEDURE</p>	
<p>Administration of the Fund</p>	<p>16. (1) A Co-operative organization wishing to be considered for the grant of a loan shall make an application to the Committee in a prescribed form.</p> <p>(2) A Co-operative Organization that has been awarded a loan will be issued with a Loan Identification Account Number by the Committee.</p> <p>(3) The administration and Management of the fund shall be subject to the Public finance and management Act 2012</p>
<p>Conditions for granting of loan</p>	<p>16. (1) The Committee may: -</p> <ul style="list-style-type: none"> (a) Accept or reject any application for a loan; (b) grant a loan to a Co-operative organization and in so granting impose Conditions such as <ul style="list-style-type: none"> i) have approved limit on external borrowing by the Commissioner and annual general meetings ii) The amounts borrowed shall be in line with the provisions of Sec 35(1) of The Sacco Societies Regulations 2010. iii) The applicant shall have complied with all SASRA requirements on Capital Adequacy, Liquidity and quality of loans. iv) The applicant shall provide proof of capacity to repay the loan throughout its term period v) demand security and require repayment in installments at such times and within such periods as the Agency deems fit, <p>Provided that and subject to the provisions of this section the Committee may upon the request by an applicant to whom a loan has been granted at any time vary; -</p> <ul style="list-style-type: none"> (a) The condition subject to which the loan was made; <ul style="list-style-type: none"> (i) Any security given in relation to the loan; or (ii) Any of the terms of repayment of the loan.

	<p>Provided also that the provisions of subsections (b)(ii) and (iii) above shall apply only with respect to Sacco's engaged in deposit-taking business in Siaya County.</p> <p>(2) The grant of a loan by the Committee shall be preceded with due compliance of the conditions by the applicant and no loan shall be advanced or released to an applicant until the applicant shall have complied with all the conditions set by the Committee.</p> <p>(3) Where a cooperative organization fails to comply with the conditions set by the Committee, the application shall be rejected forthwith. Provided that the applicant shall be notified in writing of the reasons for the rejection</p> <p>(4) Where in granting a loan the Committee considers it prudent to request for a guarantor to guarantee any loan granted to the cooperative institution in case of any default by a cooperative institution in the repayment of the loan, any guarantor who has guaranteed any such loan shall automatically and fully be liable to pay to the Agency all or any loan together with interest accrued and outstanding owed to the Agency by the loanee as shall be notified to the guarantor by the Agency.</p>
<p>Annual returns</p>	<p>17. (a) On the last day of each financial year the Agency shall send to all loanees an annual return form showing the status of the loan which every loanee shall be required to fill and submit to the Agency by 15th July every year.</p> <p>(b) Agency shall be required to submit annual Returns to the committee in a prescribed manner within ten days upon receipt of returns from the loanees</p>
<p>Loan Repayments</p>	<p>18. A loanee shall repay the borrowed sums and interest on such terms and conditions as may be prescribed</p>

PART VI—SETTLEMENT OF DISPUTES	
Disputes	<p>19. (1) If any dispute concerning the business of this Fund arises—</p> <p>(a) among applicants, past applicants and persons claiming through applicants, or</p> <p>(b) between applicants, past applicants and the Committee, member of the Committee or any officer of the Fund; or</p> <p>(c) between the committee and the applicant, it shall be referred to the committee</p> <p>(2) A dispute for the purpose of this section shall include—</p> <p>(a) a claim by the committee for any debt or demand due to it from an applicant or past applicant, or personal representative of a past applicant, whether such debt or demand is admitted or not; or</p> <p>(b) a claim by an applicant, past applicant or personal representative of a past applicant for any debt or demand due from the committee, whether such debt or demand is admitted or not;</p>
Arbitration	<p>20. (1) A dispute within the meaning of section 20 above may be resolved through alternative dispute resolution mechanisms such as arbitration or any other traditional methods not repugnant to morality and justice.</p> <p>(2) The County Executive Committee Member may appoint qualified persons to hear disputes using any of the methods referred to in (1) above.</p>
Appeal in the High Court	<p>21. The award of the arbitrator shall only be appealed in the high court of Kenya whose decision shall be final</p>

<p>Offences</p>	<p>22(1) Where a guarantor who has been notified by the Agency under sub-section 17 (4) fails or refuses to pay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this act.</p> <p>(2) An official of a Co-operative organizations who:-</p> <p>(a) in filling a loan application form, knowingly makes any false statement, whether orally or in Writing relating to any matter affecting his request for a loan or</p> <p>(b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or</p> <p>(c) is granted a loan based on false information.</p> <p>Shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term of not more than six months or both and in the case of paragraph (c) to a fine not exceeding one million shillings or a term of imprisonment not exceeding three years.</p> <p>(3) For any breach of these Act or lawful instructions issued by the Committee or failure to honour its obligations on time, the applicant Maybe fined an amount not exceeding Kshs.200,000.00</p>
<p>PART VII – MISCELLANEOUS PROVISIONS</p>	
<p>General provisions</p>	<p>P 23. (1) if in the opinion of the Agency there has been or is likely to be any breach or failure to comply with any condition or term of repayment respecting a loan the Agency shall forthwith: -</p> <p>(a) Recover the loan from the cooperative organization as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;</p> <p>(b) Enforce or realize any security relating thereto</p> <p>(2) The Agency may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.</p>

<p>Financial reporting and audited accounts</p>	<p>24. (1) A co-operative organization that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Agency.</p> <p>(2) The beneficiary cooperative organization shall submit the duly audited financial accounts and any other information as may reasonably be Required by the Agency within six months after the end of each financial year</p>
<p>Audit of the fund</p>	<p>25. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provision of the Public Audit Act 2015.</p>
<p>Powers to make Regulations</p>	<p>26. (1) The Member of the Executive Committee shall in consultation with the Committee make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following;</p> <ul style="list-style-type: none"> (a) The receipt, processing and approval of applications for loans and the granting of loans to applicants. (b) The preparation & maintenance of loanees records already granted (c) The withdrawal, recovery and cancellation of loan; (d) The setting up of procedures for dealing with loan defaulters. <p>(2) The regulations under the Act shall be approved by the County Executive Committee and the County Assembly before they take effect.</p>

FIRST SCHEDULE

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

1. (1) The Committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the Chairperson.
- (2) The Committee shall have at least 12 meetings in every financial year and not more than 15 meetings
- (3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Chairperson of the Committee.
- (4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.
- (5) Meetings shall be presided over by the chairperson or in his or her absence the members shall elect a chairman to preside over the meeting.
- (8) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

2. Conflict of Interest

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

Quorum

- (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee
- (2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessarily to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum. Where persons present at the committee meeting do not constitute the quorum to hold a meeting even after two consecutive postponements, the meeting shall proceed.

Voting

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

Rules and Procedure and Minutes

The Committee shall: -

- (a) Determine rules of procedure for the conduct of its business; and
- (b) Keep minutes of its proceedings and decisions

MEMORANDUM OF REASON AND OBJECTS

The Bill has been submitted by the Member of the Executive Committee for Enterprise and Industrial Development. The Bill is to establish a Development Fund for the co-operative sub-sector in SIAYA County by providing low-interest loans to co-operative institutions that seek to promote the welfare and economic uplift of the people of SIAYA County and for connected purposes.

Section 3 establishes the Fund as a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract, and to sue and be sued in its own name.

Section 4 lists the objectives of the Fund as:- to provide funds to be used for granting low-interest loans to co-operative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed ; and to provide funds to support, revive and initiate co-operative sub-sector institutions in areas that can have an immediate impact to household economy; to attract and facilitate investment in cooperative sector institution that have linkages to micro, small and medium enterprises oriented commercial infrastructure that benefit youth enterprises ; to attract and facilitate investment in cooperative sector institution that have linkages to low income persons, community-based organizations, and special interest groups; and provide funds to cooperative sector institutions to facilitate marketing of products and services both in the domestic and the international markets.

Section 5 outlines key Elements and Guiding Principles of Operating the Fund

Section 6 provides the Revenue and expenditure of the Fund

Section 7 provides for the establishment of the Cooperative Development Fund Committee. The functions of Committee are to:

- (a) Receive all the loans applications forms, do the requisite appraisals , generate and approve proposals for submission to the agency for disbursement.
- (b) Formulate policy guidelines on co-operative sector funding;
- (c) Ensure that all projects/programmes funded under this Act are consistent with the county's priorities specified in the relevant policy documents;
- (d) Authorize allocations from the fund;
- (e) Formulate or approve standards, guidelines and procedures for funding proposals under this Act.
- (f) Provide oversight in the utilization of the Fund; and
- (g) Conduct research and gap analysis to ensure continuous performance improvement of the Fund.
- (h) Assist co-operative organizations, where the Committee considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits

Section 12, 13 & 14 Provides for the appointment of an Agency, Requirements for appointment of the Agency and the functions of the Agency respectively.

Section 15 provides for the Administration of the Fund.

Section 16 contains conditions for the grant of loan under the Act.

Section 18 provides for loan Repayments

Section 26 provides for the power to make regulations for the use of the Fund. The enactment of the Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of SIAYA estimate