

COUNTY GOVERNMENT OF MIGORI

**THE MIGORI COUNTY CAR LOAN AND
MORTGAGE(AMMENDMENT) BILL,
2014**

THE CAR LOAN AND MORTGAGE FUND
(AMMENDMENT) BILL 2014

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THE CAR LOAN AND MORTGAGE FUND(AMMENDMENT) BILL 2014

A Bill for: -

AN ACT of the County Assembly of Migori to establish a Car Loan and Mortgage Fund for the Members of the Migori County Assembly and for connected purposes.

ENACTED by the County Assembly of Migori, as follows;

Short title

1. This BILL may be cited as the Loan and Mortgage Fund Bill 2014 and shall come into operation on the date of Assent by the Governor.

Interpretation

2. (1) In this BILL, unless the context otherwise requires:-

'Applicant' means a Member of the County Assembly of Migori

'Board' means the Board established under section 7 of this BILL

'Borrower' means a person in receipt of a loan and or mortgage out of the fund

"Chief Officer" means the person appointed to administer the County department responsible for financial affairs;

'Committee' means any of the Committee established under this Act;

'Governor' means the Governor of Migori County Government;

'Member of the County Assembly' means a member elected or nominated in accordance with Article 177(1) of the Constitution;

'Member of the Executive Committee' means the Member of the Executive Committee responsible for Finance;

'Prescribed' means as prescribed by the Member of the Executive Committee;

Establishment of the Fund

3. (1) There is hereby established a Fund to be known as the Loans and Mortgage Fund

(2)The Fund shall be 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

Objectives of the Fund

4. (1) The object and the purpose of the Fund is to enable loans and Mortgages to be advanced to Members of the Migori County Assembly as may be prescribed by the Salaries and Remunerations Commission.

(2) With respect to the fund, the Members of the Migori County Assembly shall each be entitled to a Car loan and or Mortgage facility as follows;

(a) A maximum Car Loan facility of Kenya Shillings Two Million at three per centum per annum on a monthly reducing balance

(b) A maximum Mortgage facility of Kenya Shillings Three Million at three per centum per annum on a monthly reducing balance

Provided that the Loan and or Mortgage money together with the interest accrued shall be repayable within the legislative term of the borrower.

Resources of the Fund

5. (1) The resources of the Fund shall consist of—

(a) all sums of money received by or falling due to the Fund in respect of loans made therefrom and the interest on these loans;

(b) *any* amounts that may from time to time be appropriated by the County Assembly

(c) *all* sums of money borrowed by the Fund with the approval of the County Assembly for the purpose of exercising any of its functions or discharging any of its obligations;

(d) *all* sums of money earned by or arising from investments made in respect of the Fund;

(e) *all* other sums of money that may in any manner become payable to or vested in the Fund including gifts, grants and donations.

(2) There shall be paid out of the Fund any expenditure approved by the Member of the Executive Committee and incurred in connection with the administration of the Fund.

Financial Institution to be Designated Financial Agent

6. The Board may, by Notification to the County Treasury, designate a bank to act as the financial agent of the Fund and the bank so designated shall be subject to the terms and conditions of any agreement for the purpose between the Fund and itself.

Administration of the Fund

7. (1) A Loans and Mortgages Board of Management is hereby established for the purposes of this BILL and shall consist of the following members

- (a) the clerk of the County Assembly who shall be in charge of the administration of the fund and chairperson to the board
- (b) the county chief officer from the county department responsible for finance
- (c) employee of the County Assembly Service Board responsible for the Staff Welfare Committee of the County Assembly Service Board and shall be the secretary to the board
- (d) one person appointed to the County Assembly Service Board under section 12 (2)(d) of the County Government Act (2012).

(2)The Board shall be responsible for the general administration and management of the affairs of the Fund and specifically, the Board shall be responsible for;

- (a) Making recommendations with respect to the conditions under which a loan and or a mortgage shall be granted or repaid under this Act
- (b) Processing applications for the granting of loans and mortgages to Members of the County Assembly subject to the provisions of any agreement relating to the provision of the loan and or mortgage
- (c) Receiving, administering and investing the resources of the Fund;
- (d) Supervising the day-to-day running of the Fund
- (e) Liaising with financial institutions (if any) to set up a revolving fund

for the disbursement of the loans; and

(f) Generally doing all that is expedient or necessary for the proper exercise of its duties and functions with respect to the fund.

(3) The Board may co-opt any one or more persons to attend any of its meetings for the purpose of assisting or advising the Board, but no person who has been so co-opted shall have the right to vote.

(4) The meetings of the Board shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Board's functions.

(5) The quorum for a meeting of the Committee shall be the chairperson and any two members.

Appointment of Committees

8. (1) The County Assembly may appoint committees to examine and report to it on any matter whatsoever arising out of or connected with any of the boards powers and duties under this Act.

(2) The Board may by resolution declare the remuneration and allowances payable to persons, other than members of the Board, appointed to a Committee.

(3) The County Assembly may by resolution reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the Board may think fit.

Applications to the Board

9. An applicant wishing to be considered for the grant of a loan and or mortgage facility shall make an application to the Board in the prescribed form.

Lien:

10. The security for the loan or mortgage grant shall be the applicants pay slip.

Board to Keep Proper Records:

11. (1) The Board shall keep proper accounts and other records relative to its duties and functions and shall prepare annually a statement of accounts in a form to be approved by the County Treasury.

(2) Not later than three months after the end of each financial year, the Board shall submit the financial statements prepared under this section to the Auditor General.

(3) The Board shall submit a copy of the report to the County Committee Executive member responsible for Finance, the County Assembly and the Controller of Budget.

Inducing the Board to get Loan and or Mortgage

12. (1) Every person who by making or causing to be made a false representation induces or attempts to induce the Board to grant a loan is liable on conviction to a fine up to a maximum of five hundred thousand or imprisonment for a term not exceeding six months, or to both.

(2) Nothing in this section precludes the instituting of any other proceeding under any other law.

Recovery of Loans and Mortgages;

13. (1) Where a repayment of a loan and or mortgage is not made in accordance with the terms and conditions of the loan and or mortgage as provided for under this Act, the sums of money due and owing to the fund shall be recoverable by the board, without prejudice to any other remedy, in civil proceedings in the High Court.

2. Such recovery shall include;

- (a) The sums of money specified as outstanding with respect to the principal sum initially advanced
- (b) Interest for the sum of money that remains unpaid
- (c) All reasonable costs and charges incurred by the board to recover the unpaid money and interest

14. Power to make Regulations

The Board may, with the approval of the County Assembly, make Regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular, may make Regulations—

- (a) providing for the administration, management and investment of the resources of the Fund;
- (b) requiring a loanee/mortgagee to whom a loan and or mortgage is made under this Act to furnish such information as may from time to time be required by the Board;
- (c) prescribing the basis on which a loan may be obtained;
- (d) prescribing the procedure to be followed prior to the obtaining of a loan and for payment of the amount due on a loan together with any interest thereon;
- (e) prescribing anything which may be or is required to be prescribed under this Act.

15. Transition Clause:

1. In the absence of appointees to the offices relevant to the constitution of the Board as provided for herein, nothing shall stop the County Assembly from appointing an Interim Committee to deal with the functions of the Board until such time that the Board is fully constituted as provided for under the Act.
2. The Interim Committee as constituted shall be subject to the powers and mandate of the Board as provided for under the Act.

16. Remuneration of the Board

The Board shall be paid sitting allowances as shall be determined from time to time by the County Assembly and shall not have more than two sittings a week unless the extra sittings are approved by the County Assembly.

MEMORANDUM OF REASONS & OBJECTS

The Bill has been submitted by the Migori County Executive Committee Member responsible for Finance, and it seeks to establish a **Loan and Mortgage Fund for the Members of the Migori County Assembly and for connected purposes.**

Section 3 establishes the Loans and Mortgages Fund which be 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 of the Bill sets out the objective of the Fund to enable loans and Mortgages to be advanced to Members of the Migori County Assembly as may be periodically prescribed by the Salaries and Remunerations Commission.

Section 5 provides for the Resources of the Fund, which inter alia include monies appropriated for that purpose by the County Assembly of Migori, Interest on monies advanced from the fund, investments made or done with respect to the fund.

Section 6 gives power to the Board to designate a bank to act as the financial agent of the Fund subject to the terms and conditions of any agreement entered into between the bank and the fund.

Section 7 establishes Loans and Mortgages Board of Management responsible for the general administration and management of the affairs of the Fund and specifically, the Board shall be responsible for;

Section 8 allows the Board in consultation with the County Assembly to appoint committees to examine and report to it on any matter connected to its powers and functions

Section 9 provides for applications for the grant of a loan and or mortgage facility to be made to the Board in the prescribed form.

Section 10 provides for a lien to be registered by the board on the property financed through a mortgage granted under the Act.

Section 11 mandates the Board to keep proper accounts and other records relative to its duties and functions.

Section 12 provides for the offense of inducement, which on conviction

attracts a fine of a maximum of five hundred thousand or imprisonment for a term not exceeding six months, or to both.

Section 13 provides for the recovery of any outstanding loans remaining unpaid by way of civil process filed in the high court, without prejudice to any other available means.

Section 14 grants the Board the powers to make regulations under the Act subject to approval by the County Assembly.

Section 15 is a transition clause that allows the county assembly to appoint an interim committee to deal with the functions of the Board until such time that the Board is constituted as provided for under the Act.

Section 16 provides for the remuneration of the board members whenever they sit as shall be determined by the county assembly.