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**THE AGRICULTURE PRODUCE (MINIMUM
GUARANTEED RETURNS) BILL, 2024**

A Bill for

AN ACT of Parliament to support agriculture production by providing for the establishment of the minimum guaranteed returns fund in counties; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Agriculture Produce (Minimum Guaranteed Returns) Act, 2024.

Short title.

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

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary in charge of agriculture;

“Fund” means the Agriculture Produce Minimum Guaranteed Returns Fund established in section 3;

“minimum guaranteed returns” means the minimum return of money guaranteed by the Government for agricultural produce in accordance with this Act.

“comprehensive cost” means the total cost of production.

PART II — ESTABLISHMENT OF THE FUND

3. (1) There is established in each county a fund to be known as the Agriculture Produce Minimum Guaranteed Returns Fund.

Establishment of the Fund.

(2) The objects and purposes of the Fund shall be to—

(a) provide a minimum guaranteed returns for agricultural produce to ensure that farmers have a secure income;

(b) accelerate growth and development of agriculture by ensuring that with guaranteed incomes, production levels are consistent; and

(c) to improve food security.

4. (1) The Fund shall consist of—

Sources of the Fund.

(a) monies appropriated by the county assembly for purposes of the Fund;

- (b) grants, donations or gifts to the Fund;
- (c) monies allocated for that purpose from investments, fees, or levies administered by the County;
- (d) monies earned or arising from investment of the Fund; and
- (e) any money that may be payable or vested in the Fund.

5. The Fund shall be applied for the following purposes—

Purposes of the Fund.

- (a) general administration expenses of the Fund which in each financial year shall not exceed one percent of the monies in the Fund;
- (b) payment of minimum guaranteed returns in accordance with the Act;
- (c) any other purpose that would enhance the development of fair agricultural returns.

6. (1) The management of the Fund shall vest in a Committee comprising of—

Management of the Fund.

- (a) the county chief officer in charge of agriculture who shall be the chairperson;
- (b) the county chief officer in charge of finance;
- (c) the county chief officer in charge of trade;
- (d) two persons of opposite gender representing agriculture producer associations registered in the county; and
- (e) two persons of opposite gender representing unregistered agriculture producers.

(2) The appointment of persons in subsection (1) (e) by a by a notice in the *Gazette* following a competitive process.

7. (1) A member of the Committee appointed under section 6(1) (d) and (e)—

Tenure and vacation of office.

- (a) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years; and

(b) may, at any time resign from office by giving notice in writing, addressed to the appointing authority.

(2) The Committee may recommend the removal of a member appointed under section 6(1) (d) or (e) on the basis of non-performance, non-attendance of three consecutive meetings without the chairperson's approval or unethical conduct.

(3) Where a member of the Committee appointed under section 6(1) (d) or (e) is for sufficient cause unable to act as a member, the Chairperson shall determine whether such inability would result in the declaration of a vacancy.

(4) Where there is a vacancy of a member appointed under section 6(1) (d) or (e) as a result of—

- (a) removal under subsection 1(b), (2) or (3);
- (b) declaration of a conflict of interest; or
- (c) death

the appointing authority shall nominate another person to fill the vacancy.

8. The county executive committee member for agriculture shall designate officers from the agriculture department as the secretariat to the Committee.

Secretariat of the Committee.

9. The Committee shall—

Functions of the Committee.

- (a) having regard to the agricultural activities that are undertaken in the county, prepare a list the dominant crops and livestock eligible for minimum guaranteed returns;
- (b) determine and recommend the minimum guaranteed returns in the manner specified in section 13 of this Act;
- (c) review, from time to time, the minimum guaranteed returns;
- (d) determine the minimum and maximum acreage under which beneficiaries are eligible for minimum guaranteed returns under this Act;

- (e) carry out registration of beneficiaries under this Act;
- (f) approve disbursement of minimum guaranteed returns from the Fund account;
- (g) receive, review and approve reports on the performance of the Fund from the Fund Manager;
- (h) cause to be kept all proper books and record of account of the income, expenditure, assets and liabilities of the Fund;
- (i) invest any surplus funds, with the approval of the County Treasury, not immediately required in securities for the purposes of realizing the objects and purpose for which the Fund is established;
- (j) receive any gifts, donations, grants, endowments made to the Fund;
- (k) collaborate with such bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Fund is established; and
- (l) perform any other functions that are ancillary to the objects and purpose for which the Fund is established.

10. The conduct and regulation of the business and affairs of the Committee shall be as set out in the Schedule.

Conduct of
business of the
Committee

11. (1) There shall be a Fund Manager of the Fund who shall be competitively recruited and appointed by the county executive committee member for finance in consultation with the Committee on such terms and conditions as may be specified in the instrument of appointment.

Fund Manager.

(2) The Fund Manager shall be secretary to the Committee and shall, subject to the direction of the Committee—

- (a) be responsible for the day to day management of the affairs of the Fund;
- (b) manage the funds, property and affairs of the Fund;

- (c) be responsible for the management of the staff seconded to the Fund;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Fund;
- (e) cause to be prepared for the approval of the Committee—
 - (i) the strategic plan and annual plan of the Fund;
 - (ii) the annual budget and audited accounts of the Fund; and
- (f) perform any other duties as may be assigned by the Committee

(3) The Fund Manager shall hold office for a term of three years and shall be eligible for re-appointment for a further term of three years.

(4) A person shall not be qualified for appointment as the Fund Manager under subsection (1) unless that person is qualified and competent in financial matters.

Cap. 185B

(5) The Fund Manager shall cease to hold office if he or she—

- (a) resigns in writing, addressed to the Committee;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is found liable for gross misconduct or abuse of office in contravention of the Public Officers Ethics Act or any other relevant law;
- (d) is declared bankrupt;
- (e) is unable to perform the functions of office by reason of mental or physical infirmity; or
- (f) dies.

12. (1) A member of the Committee who has an interest in a matter for consideration by the Committee shall disclose, in writing, the nature of that interest and shall not participate in the deliberations in respect of that matter.

Disclosure of interest.

(2) A member of the Committee who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Committee.

PART III – MINIMUM GUARANTEED RETURNS

13. (1) The minimum guaranteed returns shall be twenty percent of the profit above the comprehensive cost.

Minimum
Guaranteed
Returns

(2) The comprehensive cost shall take into account data from the Kenya National Bureau of Statistics on the following matters—

- (a) expenditure on—
 - (i) farm inputs including seeds, herbicides, pesticides, fertilizers;
 - (ii) livestock production inputs including animal feeds, drugs;
 - (iii) labour;
 - (iv) fuel, irrigation, machinery;
 - (v) farm rent; and
- (b) any other cost as may be prescribed by the Committee.

(3) The Committee shall at the beginning of every financial year publish and publicise the minimum guaranteed returns in the *Gazette*.

(4) The Committee shall review the minimum guaranteed returns in subsection (3) at any time taking into account changing market prices.

- (5) Minimum guaranteed returns shall only be paid—
 - (a) where the agricultural produce is largely consumed locally;
 - (b) through direct transfers to the beneficiaries' bank accounts; and
 - (c) in instances where the market returns obtained by beneficiaries fall below the recommended minimum guaranteed returns.

14. A person entitled to payment of minimum guaranteed returns shall apply to the Fund in the prescribed form.

Application for
minimum
guaranteed
returns.

15. (1) The Fund may suspend or cancel payment of minimum guaranteed returns if the payment was —

Suspension of payments.

- (a) obtained through misrepresentation, fraud or failure to disclose any material information;
- (b) in excess of amounts published in the *Gazette*; or
- (c) approved in error.

(2) The amount of money paid in error under subsection (1) shall be a debt due to the Fund and shall be payable by the recipient upon demand by the Fund Manager or, if the recipient is deceased, by their estate.

PART IV — FINANCIAL PROVISIONS

16. (1) The Committee shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the county executive member for finance may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

Accounts and Audit.

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) a statement of income and expenditure during the year and
- (c) such other statements of accounts.

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act.

Cap 412B

(3) The Fund Manager shall submit to the Auditor-General all books and accounts of the Fund, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto.

(4) The Auditor-General shall be entitled to require from any member, officer, employee or agent of the Fund such information and explanation as he may consider necessary for the performance of his duties.

17. (1) The Fund Manager shall, within a period of three months after the end of each financial year or within such longer period as the county executive committee

Annual report and publication.

member for finance may approve, submit to the county executive committee member for finance a report of the operations of the Fund during such year, and the yearly balance sheet and such other statements of account as the county executive committee member for finance shall require, together with the Auditor-General's report.

(2) The Fund Manager shall, publish the report, balance sheet and statements submitted to him under subsection (1) in such manner as the county executive committee member for finance may specify.

(3) The county executive committee member for finance shall submit to the county assembly the reports, balance sheet and statements under subsection (1), within a period of fourteen days of the receipt of the reports and statements.

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

Financial year
of the Fund.

PART V – MISCELLANEOUS

19. All letters and instruments written or made by or on behalf of the Committee, other than those required by law to be under seal, and all decisions of the Committee shall be signed under the hand of the Fund Manager or in the absence of the Fund Manager, by a person authorized by the Committee.

Signing
Authority.

20. Liability shall not attach to a member of the Committee, the Fund Manager or a secretariat of the Fund for loss or damage incurred by a person as a result of an act or omission done or made in good faith and without negligence in the course of executing the functions, powers or duties of the Fund.

Protection from
personal
liability.

21. The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.

Regulations.

22. A County Assembly may enact county legislation to provide for any of the following matters—

County
legislation.

(a) the manner, conditions and forms for registration of beneficiaries under the Fund;

- (b) the forms for application for payment of minimum guaranteed returns from the Fund; and
- (c) the criteria for evaluation of an application for payment of minimum guaranteed returns.

SCHEDULE**s. 10****CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

1. (1) The Committee shall meet at least once in every three months to conduct the business of the Committee.

Meetings of the Committee.

(2) The chairperson shall convene the ordinary meetings of the Committee at the premises of the Committee.

(3) Despite the provisions of sub-paragraph (1), the chairperson shall, upon a written request by at least five members of the Committee, convene a special meeting of the Committee at any time where he considers it expedient for the transaction of the business of the Committee.

(4) The Secretary to the Committee shall by written notice circulated to every member of the Committee, not less than fourteen days to the appointed date of the meeting invite the members of the Committee to a meeting, unless three quarters of the total number of the members of the Committee otherwise agree to a shorter notice period.

(5) The quorum for the conduct of the business of the Committee shall be five members.

(6) The chairperson shall preside at every meeting of the Committee at which the chairperson is present and in the absence of the chairperson, the members of the Committee present shall elect one person from their number to preside over the meeting of the Committee and that person shall have all the powers of the chairperson.

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

(8) The proceedings of the Committee shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Committee may determine its own procedure and the procedure for any committee of the respective Committee and for the attendance of other persons at its meetings thereof.

2. (1) If a member of the Committee is directly or indirectly interested in any contract, proposed contract or other matter before the Committee and is present at a meeting of the Committee at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the interest of the member in the matter and shall not take part in the deliberations over, or vote on, the matter.

Disclosure of interest.

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

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of Committee by any person generally or specially authorized by the Committee for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to establish the Agriculture Produce Minimum Guaranteed Returns Fund. Kenya's Vision 2030 has identified agriculture as one of the key sectors to deliver a 10% annual economic growth rate. This is in recognition of the fact that the agriculture industry has, for many years, formed the backbone of Kenya's economy. The sector contributes to more than 20% of Kenya's gross domestic product (GDP), 60% of the total export earnings and about 45% of government revenue, while providing for most of Kenya's food requirements. The sector is estimated to have a further indirect contribution of nearly 27% of GDP through linkages with manufacturing, distribution, and other service related sectors. The agriculture sector employs over 40% of Kenya's population and more than 70 percent of the rural population.

The agriculture industry faces many challenges that reduce its contribution to the economy and improvement of livelihoods. Some of the challenges relate to limited access to agricultural finances and market uncertainties which affect the incomes of farmers. The proposed Agriculture Produce Minimum Guaranteed Returns Fund is intended to cushion farmers from the uncertainties in the market to ensure stable returns.

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

The Bill delegates legislative powers to the Cabinet Secretary but does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

Paragraph 1 of Part 2 of the Fourth Schedule to the Constitution designates agriculture as a function of county governments. This Bill therefore affects the economic growth of most counties and the country as a whole and is as such a Bill concerning county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th April, 2024.

VERONICA MAINA,
Senator.