

The Commodities Fund Draft Bill.....

THE COMMODITIES FUND BILL, 2021

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THE COMMODITIES FUND BILL, 2021

A Bill for

AN ACT of Parliament to provide for the establishment of the commodities fund; to facilitate access to affordable credit, promotion and development of agricultural commodities, and for connected purposes.

ENACTED by the Parliament of Kenya as follows-

PART I – PRELIMINARY

short title and commencement	1. This act may be cited as the Commodities Fund Act, 2021 and shall come into operation on such a date as the Cabinet Secretary may, by notice in the <i>gazette</i> , appoint.
Interpretation	2. In this Act, unless the context otherwise requires – “Board” means the Board of Trustees established under section 6 of this Act; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture; “Farm improvement” includes farm inputs and farming operations. “Fund” means the Commodities Fund established under section 4 of this Act; “Managing Trustee” means the Managing Trustee of the Fund appointed under section 14 of this Act; “Scheduled crops” means any of the crops listed under the First Schedule and includes such other crop as the Cabinet Secretary may by notice in the <i>gazette</i> declare to be a scheduled crop ; “Value chain” means activities done to increase production efficiency so that maximum value is achieved for the least possible cost and includes production, marketing and the provision of after sales services;
Objects and purpose	(3) The objective of this Act is to streamline and harmonize affordable lending policies in the agricultural sector, accelerate the growth and

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	development of agriculture and enhance productivity and income of farmers.
Application	(3) This Act shall apply to all scheduled crops specified in the First Schedule, farmers, farmers' organizations, cooperatives and community associations.

PART II – ESTABLISHMENT OF THE COMMODITIES FUND

Establishment of the Fund 4. (1) There is established a Fund to be known as the Commodities Fund whose management shall vest in the Board established under section 9.

(2) The Fund shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of-

(a) suing and being sued;

(b) acquiring, holding or disposing of movable and immovable properties for the purposes of this Act;

(c) borrowing and lending money;

(d) entering into contracts; and

(e) performing such other acts as are necessary for the proper discharge of its functions under this Act or any other written law.

No.16 of 2013 (3) The Fund shall be the successor to the Commodities Fund established under section 9 of the Crops Act, 2013.

Object and purpose of the fund (5) The Fund shall be used to provide sustainable affordable credit and advances to farmers and value chain players for all or any of the following purposes-

(a) farm improvement;

(b) value addition;

(c) agro-processing;

(d) price stabilization;

(e) developmental grants; and

(f) any other lawful purpose approved by the Cabinet Secretary.

Sources of funds (6) The Fund shall consist of-

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- (a) funds appropriated by Parliament for this purpose;
- (b) monies paid as license fees, commission, export or import agency fees and fees that may accrue;
- (c) levies from the Crops sector that shall be apportioned by the Cabinet Secretary;
- (d) grants received from the government, partners, donors and/or International organisations;
- (e) interests earned from monies invested by the fund; and
- (f) Funds from any other lawful source approved by the Board.

General power to apportion levies

(7) (1) The Cabinet Secretary shall, pursuant to Section 7(c) and by a notice in the gazette, apportion a percentage of funds levied on a schedule crop or crop product to the Fund.

(2) Notwithstanding the stipulations of section 8(1) above, the Cabinet secretary may impose additional levy payable to any of the scheduled Crops for purposes enabling lending under the Fund.

Establishment and composition of Trustees

(8) (1) There shall be a Board of Trustees of the Fund consisting of-

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary responsible for matters relating to agriculture or his representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or his representative designated in writing;
- (d) Two representatives of the Council of Governors designated in writing;
- (e) Three persons appointed by the Cabinet Secretary through a competitive process taking into account regional balance, gender parity and persons with disability who have experience and capacity in agriculture, socio-economic development, business, commerce, finance, economics, engineering, accountancy, law or administration; and
- (f) The Managing Trustee who shall be an *ex-officio* member

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- (2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (3) The Board may co-opt, when necessary, an individual vast in any technical matters that may need professional input from such skilled persons.

Functions of the Board

- (9) (1) The functions of the Board shall be to-
 - (a) ensure the provision of accessible and affordable credit advances;
 - (b) formulate sound policies for the regulation and management of the Fund;
 - (c) solicit for funds and other assistance to promote the object for which the Fund is established;
 - (d) ensure perpetuity of commodities price stabilization;
 - (e) keep and maintain audited accounts of the Fund and publish the accounts in the manner approved;
 - (f) collaborate with such bodies or organizations 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;
 - (g) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
 - (h) receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements;
 - (i) invest any surplus funds, with the approval of the National Treasury, not immediately required in securities for the purposes of realizing the objects and purpose for which the Fund is established; and
 - (j) perform any other functions that are ancillary to the objects and purpose for which the Fund is established.

Tenure and vacation of office

- (10) (1) A member of the Board appointed under Section 9 (1)(a) and (e) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

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(2) A member of the Board, other than an *ex officio* member may, at any time, resign from the office by giving notice in writing, addressed to the appointing authority.

(3) The Board may recommend the removal of a member based on non-performance, non-attendance of meetings or unethical conduct.

(4) Where a member of the Board is, for sufficient cause, unable to act as a member, the Cabinet Secretary shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy-

(a) under subsection (2) or (3); or

(b) as a result of declaration of conflict of interest; or

(c) by reason of the death of a member,

The Cabinet Secretary may appoint another person in accordance with the provisions of section 9(e) to fill the vacancy.

Conduct of business and affairs of the Board

(11) (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Second Schedule to this Act.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

Disclosure of interest

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

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

Managing Trustee

(13) There shall be a Managing Trustee of the Fund who shall be competitively recruited and appointed by the Board in consultation with the Cabinet Secretary, on such terms and conditions as may be specified in the instrument of appointment.

(1) The Managing Trustee shall hold office for a term of three years and shall be eligible for re-appointment for a further term of three years.

(2) That a person shall not be qualified for appointment as the Managing Trustee under subsection (1) unless that person is

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qualified and competent in financial matters and has at least ten years' experience in a relevant field.

(3) The Managing Trustee shall-

- (a) be responsible for the day-to-day management of the Fund
- (b) in consultation with the Board, be responsible for the administration and management of the Fund.
- (c) Perform such other duties as may be assigned by the Board.

Staff of the Fund

(14) The Fund shall recruit staff for the proper discharge of its functions, on such terms and conditions of service as it may deem fit.

Establishment
of regional
offices

(15) The Fund may in execution of its mandate, open regional offices to ensure service delivery.

PART III – FINANCIAL PROVISIONS

Accounts and audit

(16) (1) The Board shall cause to be kept proper books and records of accounts and such other records as are necessary to give a true and fair view of the state of the Fund's affairs.

No.18 of 2012

(2) The books and records of accounts of the income, expenditure, assets and liabilities of the Fund shall be kept and maintained in accordance with the Public Finance Management Act, 2012.

No.34 of 2015

(3) The accounts of the Fund shall be audited annually by the Auditor-General in accordance with the Public Audit Act, 2015.

Annual report

(17) The Board shall submit its report and the report of the Auditor-General together with the balance sheet and such other statements of account as the Cabinet Secretary may require for publication.

Annual estimates

(18) (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Fund for the financial year concerned.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and,

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once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

- (4) No expenditure shall be incurred for the purposes of the Fund except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Fund given with prior written approval of the Cabinet Secretary.

PART IV – MISCELLANEOUS PROVISIONS

Common seal

- (19) (1) The application of the seal of the Fund shall be authenticated by signatures of persons authorized by the Board or the Board members themselves where applicable.

(2) Where the seal of the Fund is affixed to any document and duly authenticated under this section, it shall be judicially recognized unless the contrary is proved.

Protection from personal liability

- (20) A Trustee or an officer, employee or agent of the Fund shall not be personally liable for any acts done *bonafide* in the course of executing the functions, powers or duties of the Fund.

Regulations

- (21) (1) The Cabinet Secretary in consultation with the Board shall from time to time, make regulations for the better management of the Fund.

(2) without prejudice to the generality of the foregoing, regulations made under this section may provide for-

- a) the rate of interest,
- b) the period of repayment,
- c) the form of security or guarantee, on which the loans and advances are to be made, and the manner of recovery thereof from farmers.

Offences relating to a body corporate

- (22) (1) Where an offence under this Act is committed by a body corporate or any other association, the offence shall be deemed to have been committed by a director, a partner or any other person involved in, or acting or purporting to act in the management of affairs of the body corporate or association.

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- (2) It shall be a defence to a charge under this section where the court is satisfied that –
- a) the act or omission constituting the offence took place without the person’s knowledge; or
 - b) the person took reasonable steps to prevent the commission of the offence.

PART V – REPEALS AND TRANSITIONAL PROVISIONS

Consequential
amendments
Transition

(23) The sections of the written laws in the third schedule are repealed.

(24) (1) in this section, former institution means the Commodities Fund as established under section 9 of the Crops act, 2013

(2)The assets and liabilities accrued in respect of the properties vested in the former institution by any legal instrument in force immediately before the commencement of this Act shall, by virtue of this section, be transferred, vested in, imposed or be enforceable against the Fund.

(3) Any person who immediately before the commencement of this Act was a member of a Board of the former institution shall continue to serve for a period of six months after operationalization of this Act for purposes of continuity.

(4) Any person who immediately before the commencement of this Act was an officer or employee of the former institution shall continue to hold or act in that office as if appointed to that position under this Act, and all benefits accruing to that person shall continue accruing to them.

(5) A contract subsisting between the former institution and another person before the commencement of this Act shall subsist between that person and the Fund established under this Act.

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FIRST SCHEDULE

SCHEDULED CROPS

Part 1 — Crops with breeding program under compulsory certification

Sugarcane.....	<i>Saccharum</i> spp.
Tea.....	<i>Camellia</i> spp.
Coffee.....	<i>Coffea</i> spp.
Rhodes grass	<i>Chloris gayana</i>
Irish potatoes.....	<i>Solanum tuberosum</i> L.
Cotton.....	<i>Gossypium</i> spp.
Sunflower	<i>Helianthus annuus</i> L.
Soya beans	<i>Glycine max</i> (L.) Merr.
Beans.....	<i>Phaseolus vulgaris</i> L.
Barley.....	<i>Hordeum vulgare</i> L.
Finger millet.....	<i>Elezisine coracana</i> (L.) Gaertn.
Maize.....	<i>Zae mays</i> L.
Pearl millet.....	<i>Pennisetum</i> (L.) R.Br.
Rice.....	<i>Oryza sativa</i> L. (1)
Sorghum.....	<i>Sorghum bicolor</i> (L.) Moench.
Wheat.....	<i>Triticum aestirum</i> .
Wheat (pasta).....	<i>Triticum monococum</i> L.
Bananas.....	<i>Musa</i> spp.
French beans	<i>Phaseolus ulgaris</i> L.
Silver leaf desmodium.....	<i>Desmodium uncinatum</i>
Lupin.....	<i>Lupinus</i> spp.
Lucerne.....	<i>Medicago sativa</i> L.
Green leaf desmodium.....	<i>Desmodium intorium</i> (Miller).
Setaria.....	<i>Setaria</i> spp.
Congo signal.....	<i>Bracharia</i> spp.
Coloured guinea grass	<i>Panicum coloratum</i>
Pyrethrum.....	<i>Chtysanthemum</i> spp.
Cassava.....	<i>Manihot esculenta</i>
Sweetpotato.....	<i>Ipomeea batatas</i>
Kenaf.....	<i>Hibiscus cannabinus</i> L
Sesame.....	<i>Sesamun indicum</i> L.
Safflower.....	<i>Carthamus tinctorius</i> L.
Ground nut.....	<i>Arachis hypogaea</i> L.
Pigeon pea.....	<i>Cajanus cajan</i> .
Dolichos bean	<i>Dolichos lablab</i> L.
Cowpea.....	<i>Vigna unguiculata</i> (L.) Walp.

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Chick peas.....	<i>Cicer arietenum</i> L.
Oats.....	<i>Avena sativa</i> L.
Rye.....	<i>Secale cereale</i> L.
Triticale.....	<i>Tricosecale</i> Wittm.
Broad beans.....	<i>Vicia faba</i> L.
Cluster bean	<i>Cyamopsis tetragonoloba</i> .
Pea.....	<i>Pisum sativum</i> L.
Common Vetch.....	<i>Vicia sativa</i> L.
Castor bean.....	<i>Ricinus communis</i> L.
Jjoba.....	<i>Simmondsia chinensis</i> .
Linseed	<i>Linum unitatissimum</i> L.
Oil seed rape.....	<i>Brassica napus</i> L.
Flax	<i>Linum usitatissimu</i> L.
Sisal.....	<i>Agave</i> spp.
Beet.....	<i>Beta vulgaris</i> L.
Turnip.....	<i>Brassica rapa</i> L.
Other flower species.....	<i>Liliaceae, Umbelliferae, Roses, etc</i>
Blue stem grass	<i>Andropogon</i> spp.
Buffel grass	<i>Cenchrus ciliaris</i> L.
Cock's foot.....	<i>Dactylic glomerata</i> .
Columbus grass.....	<i>Sorghum almum</i>
Paspalum grass.....	<i>Paspalum gayanus</i>
Rye grass	<i>Lolium</i> spp.
Sudan.....	<i>Sorghum sudanense</i> .
Love grass.....	<i>Eragrostis</i> spp.
Bermuda grass.....	<i>Cynodon dactylon</i> .
Butterfly pen.....	<i>Clitoria ternatea</i> .
Centrosema.....	<i>Centrosema pubescens</i> Benth.
Clover.....	<i>Trifolium</i> spp.
Leucaena.....	<i>Leucaena lencocephala</i> .
Siratro.....	<i>Macroptilium atropurpureum</i>
Stylosanthes.....	<i>Stylosanthes guianensis</i>
Amaranth.....	<i>Amaranthus</i> spp.
Artichoke.....	<i>Cynara scolymus</i> .
Asparagus.....	<i>Asparagus officinalis</i> .
Sugar beet	<i>Beta vulgaris</i> L.
Broccoli/cauliflower.....	<i>Brassica oleracea</i> var. <i>botrytis</i> L.
Brussels sprouts	<i>Brassica oleracea</i> var. <i>gemnifera</i>
Cabbage	<i>Brassica oleracea</i> var. <i>capitata</i> L.
Canteloupe/ Muskmelon	<i>Cucumis melo</i> L.
Carrot.....	<i>Daucus carota</i> L.
Celery / Celeriac	<i>Apium graveolens</i> L.
Chicory.....	<i>Cichorium intybus</i> L.
Chinese cabbage.....	<i>Brassica chinensis</i> L.
Chirvil.....	<i>Anthriscus cerefolium</i> .
Collards / Kale.....	<i>Brassica oleracea</i> var <i>ancephala</i> DC

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Corriander.....	<i>Coriandrum sativum</i>
Cucumber.....	<i>Cucumis sativus</i> L.
Dill.....	<i>Arethum graveolens</i> L.
Eggplants.....	<i>Solanum melongena</i> L.
Endive	<i>Cichorium endivia</i> L.
Garden cress.....	<i>Lespidium sativa</i> L.
Karella	<i>Cucumis</i> spp.
Kohlrabi	<i>Brassica oleracea</i> var. <i>gongylodes</i> .
Leek	<i>Allium porrum</i> L.
Lettuce	<i>Lactuca sativa</i> .
Okra	<i>Hibiscus esculentus</i> L.
Onion.....	<i>Allium cepa</i> L.
Parsley	<i>Petroselinum crispum</i> (Mill) Nym.
Parsnip	<i>Pastinaca sativa</i> L.
Pea.....	<i>Pisum sativum</i> L. <i>Sensulato</i> .
Pepper.....	<i>Capsicum</i> spp.
Pumpkin/Squash/Courgette	<i>Cucurbita pepo</i> L.
Radish	<i>Raphanus sativus</i> L.
Rhubarb	<i>Rheum rhaponticum</i> L.
Rutabaga.....	<i>Brassica napus</i> var. <i>napobrassica</i> L.
Spinach	<i>Spinacea oleracea</i> L.
Swiss chard.....	<i>Beta vulgaris</i> .
Tomato	<i>Solanum lycopersicon</i> .
Turnip	<i>Brassica rap</i> L.
Water cress	<i>Nasturtium officinale</i> Ribr.
Water melon.....	<i>Citrullus</i> spp.
Coconut.....	<i>Cocos nucifera</i> .
Cashewnut	<i>Indigenous Vegetables.</i> (<i>Blacknightshade, Spider plant, etc.</i>).
Guava.....	<i>Psidium</i> .
Fruit trees	(<i>Mangoes, Avocado, Citrus, Pawpaw, etc.</i>).
Miraa	<i>catha edulis</i>

SECOND SCHEDULE

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF
THE BOARD**

- i. The Board shall meet not less than four times in every financial year and not more than four months shall lapse from the date of the last meeting, or as guided by the Government as to the Conduct on Board meetings.
- ii. The quorum for the conduct of the business of the Board shall be five members.
- iii. Where the chairperson is absent, the members present shall elect one of their members to preside, and the person elected shall have all powers of the chairperson with respect to that meeting and the business conducted.
- iv. The chairperson of a meeting shall in the case of equality of votes have a second or casting vote.
- v. The members shall cause minutes of all proceedings at their meetings, and of all proceedings at meetings of every committee that may be appointed by them, to be entered in books kept for that purpose.
- vi. The books containing the minutes of such proceedings shall remain the property of the Fund and shall be kept at such place as the custodian think fit, and shall at all times be made available to the Cabinet Secretary and to all persons authorized by him in that behalf.
- vii. Trustees may from time to time establish committees for the better carrying out of its functions.
- viii. Trustees may co-opt into the membership of committees established under paragraph (vii) a person whose knowledge and skills are necessary for the proper discharge of the functions of the Board.
- ix. A person who has been co-opted to attend and deliberate at a meeting of the Board shall not have a right to vote at the meeting.
- x. The decisions of the Board shall be by concurrence of the members present but where concurrence is not achieved, decisions shall be by a majority of the members present and voting.

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THIRD SCHEDULE

PART A: WRITTEN LAWS TO BE REPEALED

1. Crops Act,2013
 - Section 9, 10 and 33
2. The Tea Act,2020
 - Section 53
 - Section 54

PART A: WRITTEN LAWS TO BE AMENDED

- Crops Act,2013
- The Tea Act, 2020

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