

CONSTITUTION

OF

BOMET DEVELOPMENT TRUST

SEPTEMBER 2013

PART I: NAME

1.0 NAME: Bomet Development Trust hereinafter referred to as "The Trust"

2.0 PART II: OBJECTIVES

2.1 ARTICLES II: MAIN OBJECTIVES

The main purpose of the Trust is to promote social, economic and cultural development of Bomet County.

2.2 ARTICLE III: SPECIFIC OBJECTIVES

Within the framework of the foregoing, the Trust shall have the following principal objectives:

To promote economic activities (trade, commerce, ICT, etc.)
To promote quality education
To promote better healthcare
To promote access to clean drinking water
To promote access to quality housing
To promote modern agriculture
To promote infrastructure development (roads, electricity, etc.)

3.0 PART III: MEMBERSHIP AND GOVERNANCE

3.1 ARTICLE IV: MEMBERSHIP

The subscription to this constitution and such other persons or organisations as the Board of Trustees may from time to time admit to membership, the membership being not less than nine (9) persons shall be members of the Trust, provided that a member shall cease to be a members if:

- i) He/she gives a one-month notice in writing to the Board of Trustees of his/her intention to resign form membership. Upon the expiry of such notice, he/she shall cease to be a member.
- ii) If he/she is removed from membership by the vote of not less than two-thirds of Trustees at an Extraordinary Meeting of the Trust specially convened and at which he/she has been given a reasonable opportunity of attending and being heard.

3.2 ARTICLE V: NUMBER OF TRUSTEES

Until otherwise varied by a special resolution passed at a General Meeting, the Board of Trustees shall consist of the Chair, Secretary and Treasurer. The Board of Trustees shall be the policy-making organ of the Trust. The minimum number of the Board of Trustees shall be three (3) while the maximum shall be nine (9).

3.3: ARTICLE VI: THE MANAGEMENT STRUCTURE

There shall be the office of the Chief Executive Officer (CEO) who shall be an employee of the Board of Trustees and head of the Management of the Trust and shall have powers to manage the day-to-day affairs of the Trust to achieve the objectives of the Trust and that no regulations made by the Trust at a General Meeting shall invalidate any prior act of the Management which would have been valid if such regulations had not been made.

The CEO shall be responsible to the Board of Trustees and his/her terms of services shall be determined by the Board of Trustees. The CEO shall, *inter alia*:

- a) Represent and act on behalf of the Trust generally
- b) Do all such acts as may be necessary for the efficient running of the Trust's affairs
- c) Keep full, complete and up-to-date records of the Trust's affairs.

3.4 ARTICLE VII: FIRST APPOINTMENT TO THE BOARD

The interim members of the Board of Trustees shall be appointed in writing by the subscribers to this constitution and shall include three (3) persons who shall act respectively as Chairman, Secretary and Treasurer of the Trust until the conclusion of the first Annual General Meeting when a substitute Board of Trustees shall be appointed to serve for a period of three (3) years provided that a member of the Board of Trustees shall be a member of the Trust .

3.5 ARTICLE VIII: OTHER APPOINTMENTS TO THE BOARD

The Board of Trustees may from time to time and at any time appoint any member of the Trust, in case of vacancy or by way of addition, to the Board of Trustees, provided that the prescribed maximum is not thereby exceeded and provided also that the proposal to appoint a new member of the Board of Trustees under this section shall be set in a formal resolution forming part of the notice convening the Board of Trustees meeting.

3.6 ARTICLE IX: ALTERNATES

Any member of the Board of Trustees may appoint another member to be his/her alternate to act in his/her place at any meetings of the Board of Trustees at which he/she is unable to be present. Such appointees shall be entitled to exercise all the rights and powers of a member of the Board of Trustees and, where they are members of the Board of Trustees, shall have a separate vote on behalf of their appointers in addition to their own votes. A member of the Board of Trustees may revoke, at any time, the appointment of an alternate appointed by him/her. The appointment of an alternate shall be revoked *ipso facto*, if his appointer ceases to be a member of the Board of Trustees. Every appointment and revocation under this paragraph shall be effected by notice in writing under the hand of the appointer served on the Trust.

3.7 ARTICLE X: OFFICE BEARERS

The Organisation shall at an Annual General Meeting every three (3) years elect from its members its Chairman, Secretary and Treasurer. The officials shall hold office until the expiry of their three-year term when they shall retire but be eligible for re-election. If any of the officials, during his/her term of office, resign from office, or die, the Board of Trustees shall elect one of their number to hold office until the next Annual General Meeting when a new official shall be elected.

3.8 ARTICLE XI: DUTIES OF OFFICE BEARERS/OFFICIALS

The Chairman shall chair all meetings of the Board of Trustees and all general meetings; he/she shall provide general guidelines related to the affairs of the Trust. In his/her absence, the Board of Trustees shall appoint one of their own to chair the meeting.

The Secretary shall:

- a) Keep minutes of the meetings of the Board of Trustees and the General Meetings;
- b) Carry out all correspondences and publicity on behalf of the Trust;
- c) Arrange for meetings of the Trust on instructions of the Board of Trustees and in special circumstances, on instructions of the General Meetings;

The Treasurer shall:

- a) Ensure that proper accounting procedures are adhered to;
- b) Keep financial records of the Trust and ensure that accounting has been carried out efficiently by the Management of the Trust;
- c) Facilitate the opening of the Trust's any type of bank account(s) on the advice of the Board of Trustees;
- d) Ensure that reports and financial statements of the Trust and audited accounts have been properly kept by the Management of the Trust and are available for inspection by the Board of Trustees and the Annual General Meeting.

3.9 ARTICLE XII: REMOVAL OF BOARD MEMBERS AND OTHER OFFICIALS

The Board of Trustees may by resolution remove any member of their body from office, but if such a member should be aggrieved at his/her removal, he/she may appeal to a General Meeting to be called to deliberate on the case and arrive at a decision. In the meantime, he/she shall cease to act as a member of the Board of Trustees and to hold any other office under the Trust, and members of the Board of Trustees for the time being may act notwithstanding any vacancy in their body, provided always that the minimum 50% of members of the Board of Trustees remain and constitute a quorum for the purpose of filling up vacancies in their body and of summoning a General Meeting, but not for any other purpose.

4.0 PART IV: MEETINGS AND QUORUMS

4.1 ARTICLE XIII: PROCEEDINGS OF THE BOARD OF TRUSTEES

The Board of Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit. The quorum necessary for transacting business shall not be less than half the number of members of the Board of Trustees for the time being. Questions arising at the meeting shall be decided by a majority of votes. In case of any equality of votes, the Chairman shall have a second vote.

4.2 ARTICLE XIV: CALLING MEETINGS

- a) Normal Meetings
All meetings of the Board of Trustees shall be summoned by the Secretary acting in consultation with the Chairman by giving at least a 5-day notice accompanied by the proposed agenda of the meeting.
- b) Requisitioned Meetings
A member of the Board of Trustees may request for a meeting and having notified the Chairman of such a request, the Secretary shall call for the meeting as requested by the member.

4.3 ARTICLE XV: FORMATION OF COMMITTEES

The Board of Trustees may set up committees to undertake specific tasks with delegated powers conferred upon them provided that the proceedings of such committees are governed by the provisions of this constitution and provide that the resolution creating the committees has been signed by not less than two-thirds of the members of the Board of Trustees.

4.4 ARTICLE XVI: DISQUALIFICATION OF MEMBERS OF THE BOARD OF TRUSTEES

The office of a member of the Board of Trustees shall be vacant:

- a) If a receiving order is made against him/her;
- b) If he/she becomes of unsound mind;

- c) If he/she fails to attend four (4) consecutive meetings of the Board of Trustees except by special leave of the Board of Trustees;
- d) If by notice in writing to the Trust he resigns his/her office;
- e) If he/she removed from office by a resolution duly passed under this constitution;
- f) If he/she is removed from membership of the Trust pursuant to a resolution of the Trust.

4.5 ARTICLE XVII: GENERAL MEETINGS

The Trust shall in each year hold a General Meeting as the Annual General Meeting (AGM) in addition to any other meetings in the year and shall specify the meeting as such in the notice calling it. The AGM shall be held at such time as the Board of Trustees shall appoint provided that not more than fifteen months shall have elapsed between one AGM and the next. The AGM shall be called Ordinary General Meeting and all other general meetings shall be called Extraordinary General Meetings

4.6 ARTICLE XVIII: MANNER OF CONVENING EXTRAORDINARY GENERAL MEETINGS

- a) The Board of Trustees may, whenever it thinks fit, convene an Extraordinary General Meetings;
- b) The Board of Trustees shall also on the requisition of not less than one third of members of the Trust proceed to convene an Extraordinary General Meetings provided that the requisition must state the objects of the meeting and must be signed by the acquisitionists and deposited at the office of the Trust.

4.7 ARTICLE XIX: NOTICE OF GENERAL MEETINGS

Fourteen-one days' notice, specifying the venue, the day and hour the Trust's General Meetings, notwithstanding that it is called by shorter notice than that specified in the constitution, be deemed to have been duly called if it is so agreed by all the members entitled to attend and vote.

4.8 ARTICLE XX: PROCEEDINGS AT GENERAL MEETINGS

- a) All business shall be deemed special that is transacted at an Extraordinary General Meeting and also all that is transacted at an Ordinary General Meeting with the exception of the consideration of the accounts and balance sheets, the reports of the Board of Trustees and Auditors the elections of the Board of Trustees, appointment of Auditors, provided that no business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business members present in person or by proxy shall constitute a quorum.
- c) The Chairman of the Board of Trustees shall preside at every General Meeting, but in his/her absence the members present shall designate one their members to be Chairman of the meeting.
- d) The Chairman of any meeting at which a quorum is present may with the consent of the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished.

4.9 ARTICLE XXI: VOTING AT GENERAL MEETINGS

- a) Every member shall have one vote provided that when any matter affecting a member personally comes before the meeting, although he/she may be present at it, he/she shall not vote on the question and the Chairman may require him/her to withdraw during the discussion, and he/she shall in that case withdraw accordingly.

- b) On a poll, votes may be given personally or by proxy provided that the instrument appointing a proxy shall in writing under the hand of the appointer or his/her duly authorised agent in writing.
- c) In case of equality of votes, whether on show of hands or on a poll, the Chairman of the meeting at which a vote takes place, shall be entitled to a second or casting vote.

5.0 PART V : ARTICLE XXII: FUNDS AND RESOURCES UTILISATION

5.1 ARTICLE XXII: APPLICATION OF FUNDS AND ASSETS

The funds and assets of the Trust shall be applied solely towards the promotion of objects of the Trust as set forth in this constitution. Payment shall be made by way of reasonable and proper remuneration to any officer or servant of the Trust or any member of the Trust in return for any services actually rendered to the Organisation. Remuneration is pegged to actual work or service done for the Trust.

5.2 ARTICLE XXIII: DISCLOSURE OF INTEREST IN CONTRACTS

A member of the Board of Trustees, Management or Committee who is in any way, whether directly or otherwise, interested in a contract with the Trust shall disclose the nature of the interest at a meeting of the Board of Trustees when the question of entering into contract is taken into consideration.

5.3 ARTICLE XXIV: DISPOSAL OF RESIDUAL ASSETS ON WINDING UP OR DISSOLUTION

If upon winding up or dissolution of the Trust there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst members of the Trust but shall be given or transferred to the County Government of Bomet for onward distribution to institution(s) having objects similar to the objects of the Trust and which shall continue in the economic, social and cultural development of Bomet County.

5.4 ARTICLE XXV: INDEMNITY OF BOARD OF TRUSTEES MEMBERS

Every member and other officers or servant of the Trust shall be indemnified against (and it shall be the duty of the Board of Trustee, out of the funds of the Trust, to pay) all costs, losses and expenses which such person may incur or become liable for by reason of any contract entered into, or act or thing done by him in good faith in the capacity aforesaid, in any way in the discharge of his/her duties, including travelling expenses, and the Board of Trustees may give to any officer or employee of the Trust who has incurred or may be about to incur any liability at the request or for the benefit of the Board of Trustees, such security by way of indemnity as it may think proper.

5.5 ARTICLE XXVII: ACCOUNTS

- 1 It shall be the work of the Treasurer to ensure that proper books of accounts are kept at all times.
- 2 At the Annual General Meeting in every year, the Board of Trustees shall lay before the members proper Income and Expenditure Account for the period under review accompanied by a report of the Board of Trustees and external auditors in this respect.
- 3 A proper balance sheet as the date on which the income-expenditure account is made up shall be prepared every year and laid before the members present at the Annual General Meeting. Every such balance sheet shall be accompanied by proper reports of the Board of Trustees and auditors.

- 4 Copies of these documents shall be disseminated or filed as per the requirements of statutory requirements of the time.
- 5 Books of accounts will be made available to any member of the public desirous to inspecting them provided that adequate notice is given to the Treasurer to arrange the availability of the same.

5.6 ARTICLE XXVIII: AUDITORS

- 1 The Trust shall at each Annual General Meeting appoint an auditor to office until the next Annual General Meeting provided that a member of the Board of Trustees or other officer of the Trust shall not qualify to be appointed auditor of the Trust.
- 2 The remuneration of the auditor shall be fixed at the Annual General Meeting
- 3 The auditor of the Trust shall have the right to see all relevant vouchers and shall be entitled to access at all times to the books and accounts he/she requires from the Trust.

5.7 ARTICLE XXIX: INSPECTION OF BOOKS OF ACCOUNTS

The books of accounts and all documents relating to the Trust shall be available for inspection at the office of the Treasurer of the Trust upon giving not less than seven (7) days' notice in writing to the Trust in which case, the books of account and all documents relating thereto shall be open for inspection by any other member of the public during business hours.

5.8 ARTICLE XXX: FINANCIAL YEAR

The financial year of the Trust shall begin on the first day of July and end on the last day of June of every year or at such other time as the Board of Trustees may from time to time determine.

5.10 ARTICLE XXXI: ARBITRATION CLAUSE

Save where by this constitution the decision of the Board of Trustees is made final if at any time thereafter any dispute difference or question shall arise between the Board of Trustees, Members, or the employees of the Trust or other persons or their personal representatives or any of them respectively touching on the construction, meaning or effect of this constitution or any cause or thing therein contained or the rights or liabilities of the said parties respectively or any of them under this constitution or otherwise howsoever in relation to the constitution then every such dispute or question shall be referred to arbitration by a single arbitrator appointed by agreement between the parties, and in default of such agreement, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) in accordance with and subject to the provisions of the Arbitration Act (Chapter 49) of the Laws of Kenya or any statutory modification or re-enactment thereof for the time being in force.

6.0 PART VI: AMENDMENT TO THE CONSTITUTION

6.1 ARTICLE XXXII: AMENDMENTS

Subject to the provisions of the relevant law relating to trusts, the Trust may, by special resolution pass, modify or repeal this constitution or adopt a new constitution or change the name of the Trust, provided that no such alteration, amendment or modification shall be made which shall not impair or prejudice the effectiveness of the prohibitions contained in this constitution against distribution of income, property and assets of the Trust to the members.

7.0 PART VIII: DISSOLUTION AND DISPOSAL OF PROPERTY

ARTICLE XXXIII: DISSOLUTION

- 7.1 The Trust shall not be dissolved or wound up except by a resolution passed at a General Meeting of the members by votes of two-thirds of the members present. The quorum of the members shall be fifty per cent of all members of the Trust. If no quorum is obtained, the proposal to dissolve or wind up the Trust shall be submitted to a further General Meeting which shall be held one month later. Notice of this meeting shall be given to all members of the Trust at least 145 days before the date of the meeting. The quorum for this second meeting shall be the number of members present.
- 7.2 The Trust will not be dissolved without prior consent in writing by the County Government of Bomet, obtained from the Executive Members responsible for Finance (member of County Cabinet).
- 7.3 Upon dissolution of the Trust, its remaining assets shall be distributed to another entity with similar objectives as the Trust.

Dated this 30th day of September 2013

Signed by the three top officials:

Chairman: Name Bill Rutto .Signature

A handwritten signature in black ink, appearing to read "Bill Rutto", followed by a horizontal line.