

SPECIAL ISSUE

Kenya Gazette Supplement No. 27

13th February, 2015

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 24

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24 (4) and (11) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury makes the following Regulations:—

THE PUBLIC FINANCE MANAGEMENT (AFFIRMATIVE ACTION SOCIAL DEVELOPMENT FUND) REGULATIONS, 2015

1. These Regulations may be cited as the Public Finance Management (Affirmative Action Social Development Fund) Regulations, 2015.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“affirmative action” has the meaning assigned to it under Article 260 of the Constitution;

“affirmative action groups” includes women, the youth, persons with disabilities, children and the elderly;

“Accounting Officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“Board” means the Affirmative Action Social Development Fund Board established under regulation 8;

“County Committee” means the County Affirmative Action Social Development Fund Committee established under regulation 16;

“county coordinator” means a person appointed as a County Coordinator of the Fund under regulation 18;

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under regulation 17;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the Affirmative Action Social Development Fund (AASDF) established under regulation 3;

“officer administering the Fund” means a person nominated by the Principal Secretary responsible for finance and designated by the Cabinet Secretary as the administrator of the Fund

“Public Sector Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No 18 of 2012

“Revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No 18 of 2012

“Revolving Fund” means a fund established by the recipient affirmative action group or Savings and Credit Cooperative Organization (SACCO) or cooperative for receiving funds and disbursing loans under Regulation (6) (2) (a) of these Regulations.

“Youth” has the meaning assigned to it under Article 260 of the Constitution; and

“Woman” means a person of the female gender who is above eighteen years of age.

PART II—ESTABLISHMENT OF THE FUND

3. (1) There is established Fund to be known as the Affirmative Action Social Development Fund which shall vest in and be operated and managed by the Board.

Establishment of the Fund.

4. The Fund shall consist of—

Sources of the Fund.

- (a) such moneys as may be appropriated by the National Assembly from time to time;
- (b) grants and donations;
- (c) income generated from the proceeds of the Fund; and
- (d) any moneys accruing to or received by the Fund from any other source;

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuant of the object and purpose for which the Fund is established.

Expenditure of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programme, and of any cost estimate, shall be referred to the Board for approval.

(4) Funds provided under these Regulations shall not be used for the purpose of supporting political parties or entities.

6. (1) The object and purpose of the Fund is to complement the Constituency Development Fund with a special focus on the affirmative action groups.

Object and purpose of the Fund.

(2) Without prejudice to the generality of paragraph (1), the object of the Fund is to provide for—

- (a) enhancement of access to financial facilities for women through a revolving fund for furtherance of economic empowerment initiatives such as but not limited to table banking, savings and credit cooperative organization's and

the amount allocated to this objective shall not exceed twenty (20%) of the total fund receipts;

- (b) support of value addition initiatives by the affirmative action groups which may include but not limited to establishment of light industries such as processing of honey and cold storage facilities, construction of storage facilities, construction of market sheds and market lights and promotion of culture through construction of cultural centers;
- (c) socio-cultural development and nurturing of talent for the youth which may include but not limited to development and promotion of art, music and sports, through ICT, recreational and sports centres;
- (d) enhancement of access to services for survivors of gender based violence, female genital mutilation and early, child and forced marriages through the provision of rescue centers, shelters, and legal aid centres' amongst others;
- (e) support of affirmative action groups and in particular out of school youth, orphans, children in child-headed homesteads and special needs children through bursaries and scholarships to access education opportunities, but the amount allocated to this objective shall not exceed twenty (20%) of the annual total allocations of the Fund;
- (f) establishment of rehabilitation and counselling centers for the control of drug and substance abuse and rehabilitation of persons affected by drug and substance abuse, in conjunction with the National Authority for the Campaign Against Alcohol and Drug Abuse;
- (g) carrying out of civic education and community sensitization on government programmes and policies such as the 30% procurement reservations for women, youth and persons with disabilities, existence of other government social economic empowerment opportunities such as Uwezo Fund and Women Enterprise Fund, but the amount allocated to this objective shall not exceed ten (10%) of the annual allocation of the Fund
- (h) any other function necessary to give effect to any of the objects afore-mentioned.

(3) The Fund shall perform its functions in conjunction with the relevant line government ministries and departments.

7. The Board, in consultation with the relevant Parliamentary Committee, shall develop guidelines for the proper management of the Fund.

Guidelines on the Fund.

PART III—ESTABLISHMENT AND COMPOSITION OF BOARD AND ADMINISTRATION OF THE FUND

8. (1) There is established an incorporated board to be known as the Affirmative Action Social Development Fund (AASDF) Board.

Establishment and composition of the Board.

(2) The Board shall consist of—

- (a) the Principal Secretary in the Ministry for the time being responsible for matters relating to national planning;
- (b) the Principal Secretary to the National Treasury;
- (c) the Principal Secretary in the Ministry for the time being responsible for social security;
- (d) one person to represent persons with disability and appointed by the Cabinet Secretary;
- (e) one person to represent the youth and appointed by the Cabinet Secretary; and
- (f) three other persons nominated and appointed by the Cabinet Secretary.

(3) A person shall not be appointed under paragraph (2) (d)-(f) unless that person—

- (a) holds a degree in social sciences from a university recognized in Kenya;
- (b) has at least five (5) years of experience in the relevant area of expertise; and
- (c) meets the requirements of Chapter Six of the Constitution.

(4) Any appointment under paragraph (2) shall be in accordance with Article 27 of the Constitution.

(5) The Chief Executive Officer shall be the Secretary to the Board.

9. (1) The functions of the Board shall be to—

- (a) receive, review and approve project proposals submitted from the various counties in accordance with these Regulations for funding;
- (b) oversee management of the Fund;
- (c) oversee timely and efficient disbursement of the Fund;
- (d) receive, review and approve statutory and management reports of the Fund; and
- (e) perform such other duties as may be deemed necessary by the Cabinet Secretary from time to time for the proper management of the Fund.

Functions of the Board.

(2) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

10. The initial capital of the fund shall be two billion and thirty million shillings appropriated by Parliament in the financial year 2014/15.

Capital of the Fund.

11. (1) Disbursements from the Board shall be done by the Board in consultation with the relevant Parliamentary Committee.

Fund disbursement

(2) Each and every disbursement from the Fund shall be approved and minuted by the Board.

(3) Annual disbursements from the Fund to each respective County shall be on the basis of equal amounts per constituency.

(4) All disbursements from the Fund shall be for specific projects as submitted by the County Committee and approved by the Board in accordance with the procedures outlined in these Regulations.

(5) All disbursements shall be made through the "Respective County Affirmative Action Social Development Fund" bank accounts maintained for every county in accordance with these Regulations.

(6) The record of the amounts received by each County Committee and the record of expenditure of amounts so received shall be submitted to the Board within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(7) For avoidance of doubt, no disbursements for the succeeding month due to that County Committee shall be made into the "Respective County Affirmative Action Social Development Fund" bank account until there is full compliance with paragraph (6).

(8) The Board shall set out general conditions and requirements for release of funds to ensure efficient and effective delivery of services.

(9) The Board may impose reasonable requirements, including restrictions, on a particular county and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Cabinet Secretary in accordance with these Regulations.

12. (1) All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Retention of receipts.

(2) All funds allocated to a county committee shall be cumulative and shall be carried forward from one financial year to the next, including funds retained in the accounts in accordance with paragraph (1) or funds which are not utilized for whatever reasons.

13. (1) A portion of the Fund, equivalent to two (2%) per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available to cover emergencies on affirmative action groups in line with the provisions of the Constitution and the Public Finance Management Act, 2012.

Emergency funds.

No. 18 of 2012.

(2) The Board shall determine the allocation of the Emergency Reserve to each County Committee subject to meeting the thresholds under paragraph (1).

14. Subject to the provisions of the Act, existing Government Financial Regulations and Procedures shall apply in the administration of the Fund.

Application of Government Financial Regulations and procedures Administration of the Fund.

15. (1) The accounting officer of the State Department for the time being responsible for the matters relating to planning shall be designated as the administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account at the Central Bank of Kenya or a bank to be approved by the National Treasury;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Cabinet Secretary and the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;
- (f) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act; and
- (g) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazette publication by the 21st of every fourth month.

No 12 of 2003.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

(4) Each year, five (5%) per centum of the annual allocation to the Fund shall be set aside for the Fund Secretariat, of which three (3%) per centum shall be shared to all County Committees in accordance with the set criterion for sharing of funds under these Regulations.

(5) At the commencement of these Regulations an amount totalling to five hundred million (Kshs. 500 M) shillings shall be set aside for purchase of vehicles for use by the Fund Secretariat and for each County Secretariat.

16. (1) There shall be established a committee to be known as the County Affirmative Action Social Development Fund Committee for every county.

Establishment of
County Affirmative
Action Social
Development Fund
Committee

(2) The County Committee shall—

- (a) ensure that the projects funded under these Regulations complies with the objects and purposes set out in these Regulations;
- (b) ensure compliance with guidelines on the disbursement of funds for projects approved under these Regulations;

- (c) oversee the implementation of projects financed through the Fund;
 - (d) oversee the monitoring and evaluation of projects and programmes being undertaken at the county and funded under these Regulations;
 - (e) identify, through a participatory process, projects to be funded;
 - (f) receive proposals generated through a participatory process, review them and recommend them for approval by Board for funding;
 - (g) prepare quarterly and yearly reports on the operations of the Fund;
 - (h) sensitize the community on the objects and purpose of the Fund;
 - (i) ensure projects recommended for funding are guided by the national development priorities and are not duplicative; and
 - (j) perform any other function required under these Regulations or any other written law.
- (3) Each County Committee shall consist of—
- (a) one person each, from each of the constituency in the county nominated through a participatory process, who shall have the following minimum qualifications—
 - (i) is a citizen of Kenya;
 - (ii) holds a minimum of post-secondary certificate from an institution recognized in Kenya;
 - (iii) has at least three years' experience in matters relating to the rural development or affirmation action social development; and
 - (iv) meets the requirements of Chapter Six of the Constitution;
 - (b) a representative of persons with disability nominated by the county women representative who shall meet all the requirements under paragraph (a);
 - (c) the County Commissioner or his or her nominee appointed in writing by him or her;
 - (d) the national government officer in charge of a county and responsible for gender affairs or his or her nominee appointed in writing by him or her;
 - (e) the county co-ordinator, who shall be an *ex officio* member, and who shall be the secretary to the Committee; and
 - (f) the County Women Representative, who shall be an *ex officio* member.

(4) The quorum at the meeting of the County Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by majority of those present and voting.

(5) The County Committee shall, at its first meeting, elect a chairperson and the vice-chairperson from among its members, who shall be of opposite gender.

(6) The County Women Representative shall convene the first meeting and preside over the election of the Chairperson and the Vice-Chairperson as well as file a return to the Fund Secretariat.

(7) Members of the County Committee shall be appointed by notice in the Gazette by the Cabinet Secretary and shall serve for a term of three years.

(8) A person shall cease to be a member of the County Committee—

- (a) if the person resigns from office;
- (b) is removed from office by the vote of at least two thirds of the members of the Committee on any one or more of the following grounds—
 - (i) lack of integrity;
 - (ii) gross misconduct;
 - (iii) embezzlement of public funds;
 - (iv) bringing the image of the County Committee into disrepute through unbecoming personal public conduct;
 - (v) causing disharmony within the County Committee;
 - (vi) physical or mental infirmity.

(9) A member of the County Committee, other than *ex-officio* member, shall hold office for a term of three years, but may be removed at any time by the patron of the Committee in consultation with the Committee.

(10) A decision to remove a member under paragraph 8(b) shall be made through a resolution of at least two thirds of the members of the County Committee and the member sought to be removed shall be given a fair hearing before the resolution is made.

(11) Whenever a vacancy occurs in the County Committee by reason of resignation, incapacitation or death of a member appointed pursuant to paragraph (3)(a) or (b), then the vacancy shall be filled from the same category of persons where the vacancy has occurred.

(12) The County Women Representative shall be the patron of the Fund at the county level.

17. (1) There shall be a chief executive officer of the Fund who shall be appointed by the Board.

Chief Executive
Officer.

(2) The Chief Executive Officer of the Fund shall be recruited through a competitive process and appointed by the Board subject to the provisions of Article 234 (5) of the Constitution.

(3) A person shall not be appointed as the Chief Executive Officer under this regulation unless that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in social sciences from a university recognized in Kenya;
- (c) has at least five years' experience in matters relating to the rural development or affirmation action social development; and
- (d) meets the requirements of Chapter Six of the Constitution;

(4) A person appointed as the Chief Executive Officer under this regulation, shall serve for one term of three years, which may be renewed for a further term of three years.

(5) The Chief Executive Officer shall only be subject to the directions of the Board and shall be responsible for the day to day administration of the affairs of the Fund including the staff of the Board.

18. (1) There shall be a secretariat of the County Committee in each county which shall consist of—

Secretariat of the
County Committee.

- (a) a county coordinator, appointed by the Board from that county in consultation with the County Women Representative from that county;
- (b) an evaluation officer appointed by the Board; and
- (c) such other staff as may be deemed necessary but who shall not exceed three officers, appointed by the Board.

(2) Appointments under paragraph (1) shall be through an open and competitive process.

(3) A person shall not be appointed as a county coordinator unless that person holds as minimum qualification degree in accountancy, finance, economics, social sciences with a certificate in project management being an added advantage.

(4) The county coordinator shall be the custodian of all records and equipment of the Fund at the county level.

(5) The staff shall be responsible for project monitoring evaluation, co-ordination and proper keeping of records.

PART IV—PROJECTS

19. (1) Projects under these Regulations shall be community-based and shall ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

Projects to be
community-based.

(2) Projects referred to under paragraph (1) shall be identified at the constituency level through a participatory process.

(3) Despite the provisions under paragraph (2), the community based projects may be identified from the County Integrated Development Plan.

(4) Any funding under these Regulations shall be for a complete project or a defined phase of a project and may include the acquisition of land and buildings.

(5) All projects shall be projects as defined under these Regulations and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

20. (1) The County Committee shall, once every year, through public notices in all wards within the county, invite interested members of the public to submit proposals for funding.

Submission of project proposals.

(2) Upon receipt of a proposal for funding, the County Committee shall consider all the proposals received, compile, review and recommend to the Board for approval of the projects to be funded during a particular period, while ensuring no duplication.

(3) After the County Committee has recommended the projects for approval by the Board, the county coordinator shall forward them to the Chief Executive Officer for tabling before the Board for approval and funding.

(4) Upon application by the County Committee, the Board may re-allocate funds set aside for a project to another project in the same sector, up to a maximum limit of ten per centum (10%) during a financial year.

21. Of the funds allocated to a county, less the administration and monitoring and evaluation costs, fifty percent (50%) shall be distributed equally among the constituencies in the county, while the remaining fifty per cent (50%) may be allocated for county-wide projects.

Sharing of funds at the county level

22. The Board shall, on a quarterly basis, submit a report to the relevant Parliamentary Committee dealing with matters relating to affirmative action and social development, detailing—

Quarterly reports on projects and disbursements

- (a) a summary of the project proposals approved by the Board in the preceding quarter as recommended by the County Committee and indicating the funding status of such projects, if any;
- (b) a summary of the status of disbursements of funds to the Respective County Affirmative Action Social Development Fund bank Account for that preceding quarter;
- (c) a summary of the status of disbursements from the Ministry of Planning and Devolution to the National Fund Account; and
- (d) any restriction imposed on the Respective County Affirmative Action Social Development Fund bank Account in accordance with these Regulations.

23. (1) Applicants shall qualify for Fund grant under regulation 6
(2) (a) if—

Eligibility criteria for applicants.

- (a) for a group—
- (i) is registered with the department of social services, Cooperatives or the Registrar of Societies;
 - (ii) is a affirmative action groups which shall be made up of a minimum membership of two hundred (200) women members;
 - (iii) each beneficiary affirmative action group or sacco or cooperative shall establish a revolving fund account to receive funds and advance loans of eligible members in line with Regulation 6 (2) (a) of these Regulation.
 - (iv) is based and operational at the constituency level it seeks to make an application for consideration;
 - (v) operates a table banking structure or any other group fund structure where members make monthly or quarterly contributions according to the groups' internal guidelines (evidence of monthly contributions shall be a requirement);
 - (vi) has a bank account in the name of the group;
 - (vii) should have a minimum amount of its funding up to three hundred thousand shillings (Kshs. 300,000); and
 - (viii) the revolving fund is to boost the objects of the Sacco, co-operative or table banking group for the benefit of women.
- (b) for an institution—
- (i) is a registered entity;
 - (ii) has listed women groups within it;
 - (iii) has a minimum amount of its funding up to three hundred thousand shillings (KSh. 300,000); and
 - (iv) the revolving fund is to boost the objects of the Sacco, co-operative or institution and should be revolved among women groups residing in that county.

(2) An application for the funds shall be accompanied by a resolution of a proper constituted meeting and the resolution shall be minuted.

(3) The Committee shall, on behalf of the Government, enter into an agreement with the identified beneficiary groups on the terms of revolving the fund prior to release of funds through signing a prescribed form.

(4) The prescribed form under paragraph (3) above shall at the minimum provide for:

- (a) any loan granted to a member shall attract an interest rate of five per cent to grow the fund within the group of which—

- (i) three percent shall always be retained as savings of the group or Sacco or co-operative or institution; and
 - (ii) two percent may be used to meet administrative costs of the group or Sacco or Co-operative or Institution.
- (b) any person granted a loan by the group or sacco or co-operative or institution shall be allowed a three months grace period before commencement of repayment of the loan but any loan shall be payable within two years from the expiry of the grace period
 - (c) Loan recipients' shall deposit by cash or cheque their monthly repayments for loan proceeds into the group or sacco or co-operative or institution repayment account and submit a copy of the deposit slip to group or sacco or co-operative or institution which shall issue and acknowledge receipt to the recipient person
 - (d) Upon verifiable proof of loan repayment of all loan proceeds, the group or sacco or co-operative or institution shall issue a discharge certificate to the recipient person with respect to the loan repayment.
 - (e) Each recipient group or sacco or co-operative or institution shall submit a quarterly report to the Affirmative Action Social Development County Coordinator on the financial and non-financial activities of the group or sacco or co-operative or institution

PART V—FINANCE AND ADMINISTRATION

24. (1) For the purpose of disbursement of funds under these Regulations, there shall be opened and maintained a bank account styled "*(Name of County)* County Affirmation Action Social Development Fund Account" bank account for every county, which shall be a national government bank account, at the Central Bank of Kenya or a commercial bank approved by the National Treasury, into which all funds shall be kept and such an account shall be known by the name of the county for which it is opened and each county shall maintain only one account.

"Respective County Affirmation Action Social Development Fund Account"

(2) The County Committee may recommend to the Board a suitable bank with which to open the Respective County Affirmative Action Social Development Fund bank Account, and the Board, upon receipt of the proposal, shall refer it to the National Treasury for review and approval.

(3) The bank account opened pursuant to paragraph (1), shall be separate from that of the County Treasury and its signatories shall be the national sub-county accountant and the county fund manager or the chairperson of the County Committee.

(4) At least two signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from Fund account and the signing instructions shall be such that—

- (a) the sub-county accountant is a mandatory signatory; and
- (b) either of the two signatories may sign.

(5) The county coordinator shall hold the authority to incur expenditure of the funds at the Respective County Affirmative Action Social Development Fund bank account.

(6) Every payment or instruction for payment out of the Respective County Affirmative Action Social Development Fund bank account shall be strictly on the basis of a minuted resolution of the County Committee and shall be fully supported by a payment voucher with full narration of the transaction.

(7) All receipts, savings and accruals to the Respective County Affirmative Action Social Development Fund bank account and the balances thereof at the end of each financial year shall be returned to the Fund Account.

(8) All unutilized funds shall remain in the Respective County Affirmative Action Social Development Fund bank account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the Fund Account.

(9) All unutilized funds shall be returned to the Respective County Affirmative Action Social Development Fund bank account.

(10) Any accruing revenues, interest and liabilities from any County Affirmative Action Social Development Fund bank account shall be declared to the Board together with the annual returns.

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya.

Bank account of the Fund.

(2) The signatories to the Fund account under paragraph (1), shall be the Chief Executive Officer and two other persons authorized by the Board from amongst the staff of the Board Secretariat.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and instruments intended for actual release of money from the Fund, plus any one of the other two Fund account signatories.

26. (1) An accurate record of all disbursements made for projects to every County Affirmative Action Social Development Fund bank account shall be kept and updated every month by the Board Secretariat.

Record of disbursements to be kept.

(2) The disbursement of funds to the County Affirmative Action Social Development Fund bank account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum (25%) of the annual allocation for the county and thereafter subject to approval by the Board,

(3) The Chief Executive Officer shall submit to the Board an annual report on the Fund activities, operations and expenditure under these Regulations.

(4) At the end of every financial year, the Chief Executive Officer shall submit separate accounts of the counties to the Board, before submission to the Auditor-General.

PART VI—MISCELLANEOUS PROVISIONS

27. (1) The administration costs for running the Fund and related purposes at the county level shall not be more than five per centum (5%) of the total allocation to the county.

Costs of running the Fund

(2) Despite the provisions under paragraph (1), the costs of monitoring and evaluation shall not be more than two per centum (2%) of the total allocation.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2003, and the Public Finance Management Act, 2012.

No 12 of 2003
No. 18 of 2012

28. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in the Act and these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offence and penalty.

29. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to planning.

Winding-up of the Fund

SCHEDULE

r.9(2)

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. Members of the Board appointed under these Regulations shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for a further term of three years.

Tenure of Office

2. A Member of the Board, other than ex-officio member, may—

Vacation of office

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary, if the member—

(i) has been absent from three consecutive meetings of the Board without permission from the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(v) is incapacitated by prolonged physical or mental illness;
or

(vi) is otherwise unable or unfit to discharge his functions.

3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.

Meetings of the Board

(2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

(3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, of whom the majority of shall be from amongst the non *ex officio* members.

(4) The chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by consensus.

(6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Disclosure of Interest.

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

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

5. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

Minutes

Dated the 11th March, 2015.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.