

(Legislative Supplement No. 67)

LEGAL NOTICE NO. 195

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015

1. These Regulations may be cited as the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Citation.

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

Interpretation.

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

No. 18 of 2012.

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

No. 18 of 2012.

“Advisory Board” means the Loans Management Advisory Board established under regulation 9;

“beneficiary” means State Officers and Public Officers working in the National Government as prescribed in regulation 31;

“borrower” means a person in receipt of a loan out of the Fund;

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

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under regulation 20;

“commercial use” means any motorised road vehicle, that by its type of construction and equipment is designed for, and capable of transporting, goods and services for payment;

“financial institution” means any institution referred to in regulation 19 identified for the purposes of providing financial services to the Fund;

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

“Fund” means the State Officers and Public Officers Car Loan Scheme Fund established under regulation 3;

“Motor car” has the meaning assigned to it under section 2 of the Traffic Act;

Cap. 403.

“Officer administering the Fund” means a person designated as such under section 24(5) of the Public Finance Management Act, 2012;

No. 18 of 2012.

“Public Officer” means an officer employed in the National Government or the Public Service;

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

No. 18 of 2012

“State Officers” has the meaning assigned to it under Article 260 of the Constitution but shall not include a state officer who is covered by any public motor car loan scheme; and

“value of the loan” the initial loan granted to a beneficiary or any outstanding loan balance at any given time before full loan repayment.

PART II—ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the State Officers and Public Officers Car Loan Scheme Fund.

Establishment of the Fund.

4. The object and purpose of the Fund shall be to—

Object and Purpose of the Fund.

- (a) provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these Regulations; and
- (b) cater for administrative expenses of the Fund

5. The initial capital of the Fund shall be one billion Kenya shillings appropriated by Parliament in the financial year 2014/15 and additional capital of the Fund shall be made in the subsequent financial years' budgets.

Capital of the Fund.

6. There shall be paid into the Fund—

Sources of the Fund.

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income from investments made by the Fund;
- (c) grants, donations, bequests or other gifts made to the Fund; and
- (d) monies from any other source approved by the Cabinet Secretary.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance 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 budget estimates prepared by the officer administering the Fund and shall be recommended by the Advisory Board for approval by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

8. The Officer administering the Fund, in consultation with the Advisory Board shall develop guidelines for the proper management of the Fund for approval by the Cabinet Secretary.

Guidelines on the Fund

PART III—MANAGEMENT OF THE FUND

9. (1) There is established an Advisory Board of the Fund.

Establishment and composition of the Advisory Board.

(2) The Advisory Board shall comprise—

- (a) the Principal Secretary for the National Treasury or his or her nominee who shall not be below Job Group “T”, who shall be the Chairperson;
- (b) the Principal Secretary of the State Department responsible for Public Service Management or his or her nominee who shall not be below Job Group R;
- (c) the Principal Secretary of the State Department responsible for Transport or his or her nominee drawn from the relevant technical department dealing with matters of motor car and shall not be below Job Group R;
- (d) the Chief Executive Officer or Secretary, Salaries and Remuneration Commission or his or her nominee who shall not be below the level of a director;
- (e) the Chief Executive Officer or Secretary, Public Service Commission or his or her nominee who shall not be below Job Group “R”; and
- (f) two persons nominated by the Principal Secretary for the National Treasury who shall not be below Job Group R, from the Directorates of—
 - (i) Budget, Financial and Economic Affairs; and
 - (ii) Administrative Services.

(3) The Chief Executive Officer of the Fund shall be the Secretary to the Advisory Board.

(4) The terms and conditions of service of members of the Advisory Board and the Secretariat shall be as determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

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

Functions of the Advisory Board.

- (a) process and approve loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the financial institution to set up a Fund for the disbursement of the loans;

- (c) oversee the management of the Fund;
- (d) monitor and evaluate the performance of the Fund;
- (e) approve annual work programmes and procurement plans for the Fund;
- (f) recommend the investment of any surplus funds not immediately required in securities approved by the National Treasury, for the purposes of realizing the objects 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;
- (i) consider and recommend approval of the financial statements to the officer administering the Fund;
- (j) recommend as when required the procurement of a financial institution to administer the Fund on its behalf ;
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established; and
- (l) determine its own procedures for conducting its business.

11. The maximum loan each beneficiary shall be eligible to, is set out in the Schedule to these Regulations or as may be determined by the Salaries and Remuneration Commission, from time to time.

Car loan threshold.

12. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

Loan application procedure.

- (a) an application form duly filled by the applicant;
- (b) a certified copy of the National Identify Card or Passport of the applicant;
- (c) copies of pay-slips for the immediate last three months certified by the respective accounting officers;
- (d) a certified copy of the sale agreement relating to the motor car;
- (e) a certified copy of the log book;
- (f) a non-refundable application fees of one thousand shillings or as determined from time to time by the officer administering the Fund; and
- (g) a valuation report on the motor car.

(2) For the purposes of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the Automobile Association of Kenya, a Government Department dealing with similar matters or a certified automobile valuer registered in Kenya.

(3) For the purposes of these Regulations, a loan shall not be given to a beneficiary to purchase a used vehicle that is more than eight years old from the date of manufacture or as may be determined from time to time.

(4) The applicant shall bear the cost of valuation, registration and other legal fees.

13. (1) The officer administering the Fund shall use the following eligibility criteria when evaluating a loan application—

Eligibility criteria.

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 12;
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) an undertaking by the beneficiary that the motor car shall jointly be registered and owned for the period of the loan by the National Treasury on behalf of the Government of Kenya and the beneficiary until the loan is repaid in full by the beneficiary;
- (f) an undertaking to meet such costs for the purpose of securing a motor car comprehensive insurance cover and pay such sum of money on or before thirty days before the expiry of the comprehensive motor car insurance policy as may be determined by the officer administering the Fund from time to time;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund within five years; and
- (h) any other conditions as may be prescribed by the officer administering the Fund.

14. A borrower shall take and maintain a comprehensive motor car insurance policy with an insurance company approved by the Advisory Board, the cost of which shall be paid out of the Fund and debited to the borrower's account.

Insurance in respect of motor car loan.

15. (1) A loan approved by the Advisory Board under these Regulations shall be released from the Fund to the bank account of the supplier or seller of the motor car.

Conditions for disbursement of Funds.

(2) Notwithstanding the provisions of paragraph (1), a person disbursing the funds shall confirm that the beneficiary has complied with regulations 12 and 13 of these Regulations.

(3) The officer administering the Fund shall issue a caveat prohibiting the transfer of the motor car and shall notify the Registrar of Motor Vehicles accordingly.

(4) The Registrar of Motor Vehicles shall confirm in writing to the officer administering the Fund, that a caveat issued under paragraph (3) has been entered and noted in the appropriate motor car file or data base in the registry of the Registrar of Motor Vehicles.

(5) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged motor car or any part of the motor car without the prior written consent of the officer administering the Fund;
- (b) meet costs for the motor car comprehensive insurance cover and pay such sum of money as may be determined by the officer administering the Fund from time to time;
- (c) ensure that the motor car is not used for commercial purposes; and
- (d) maintain the motor car in a satisfactory state of repair.

(6) All legal documentation and disbursement of funds shall be supervised by the Advisory Board.

(7) The officer administering the Fund shall be the custodian of the motor car log book until the loan is repaid in full by the beneficiary and thereafter the Officer Administering the Fund shall transfer the motor car log book to the beneficiary in his or her name within ninety days after full repayment of the loan.

(8) Upon receiving the motor car log book in his or her name, the beneficiary shall sign a discharge form confirming receipt of the motor car log book from the Officer Administering the Fund.

16. (1) A loan advanced under these Regulations shall be repaid in full within sixty months.

Loan repayment.

(2) The preferred method of loan repayment shall be through a check-off system or a bank standing order by the beneficiary.

(3) Notwithstanding the provisions of paragraph (1), where a state officer or public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan shall remain in force and shall not change for the life of the loan unless in cases of default in which case it shall revert to commercial terms.

(4) Where a beneficiary leaves the public service on disciplinary grounds, the terms of the loan shall convert to commercial terms after ninety days from the effective date of leaving the service.

(5) Where a default occurs for whatever reason there shall be a grace period of not more than three months, after which the car which is subject to the loan shall be repossessed and sold to recover the balance of the loan.

(6) Where a repossession of a motor car occurs under paragraph (5), the Officer Administering the Fund shall repossess the motor car within twenty one working days and the motor car shall be disposed-off within ninety days from the date of repossession to recover the loan balance.

(7) Where a motor car has been disposed-off under paragraph (6) and the amount recovered is not sufficient to cover the entire loan balance, the Officer Administering the Fund shall require the loan beneficiary to pay the difference.

(8) Any disposal of a motor car under paragraph (5) by the Officer Administering the Fund shall be through a public auction or private treaty

17. A loan granted to a member under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance basis which shall be retained in the Fund or such other rate as may from time to time be determined by the Cabinet Secretary in a gazette notice.

Loan interest.

18. (1) The Fund or where applicable, the financial institution referred to under these Regulations may charge an interest of not more than two percent per annum of the value of loan to cover its management costs.

Management cost.

(2) The interest charged under regulation 17 and 18(1) shall be paid by the borrower.

19. (1) The responsibilities of a financial institution procured under these Regulations shall be to—

Responsibilities of the financial institution.

- (a) maintain and operate an individual account for each beneficiary;
- (b) charge securities on motor cars acquired through loans from the Fund so as to protect the interest of the Fund, and act as a custodian of such charges;
- (c) disburse monies for newly approved loans to various suppliers or sellers of motor cars to beneficiaries, after the necessary communication in writing authorizing disbursement to them by the officer administering the Fund;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) issue an annual account statement to the Officer Administering the Fund for each borrower;
- (f) upon repayment of the motor car loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the beneficiaries; and
- (g) provide quarterly reports on details of recovery of the loans to the Officer Administering the Fund.

(2) The expenses of the Fund Secretariat shall be met from funds provided by Parliament for that purpose which shall include but not limited to appropriations, earnings, accruals and shall not exceed five per cent of the annual approved budget of the Fund.

20. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited and appointed through a competitive process subject to the provisions of Article 234 (5) of the Constitution.

Chief Executive Officer.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, finance, accounting or social sciences from a university recognized in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has at least ten years' experience in the relevant field.

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

(4) The Chief Executive Officer shall be subject to the directions of the Advisory Board and shall be responsible for the day to day administration of the affairs of the Fund and the Secretariat of the Fund as delegated by the Advisory Board.

21. (1) There shall be a Secretariat of the Fund to be headed by the Chief Executive Officer.

Secretariat of the Fund.

(2) The composition of the Secretariat shall be determined by the Cabinet Secretary subject to Article 234 (2) of the Constitution.

(3) The terms and conditions of service for the Chief Executive Officer and the Fund Secretariat shall be determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

22. 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 strict use for the purpose for which the Fund is established.

Retention of receipts.

23. Subject to the provisions of the Act, any other legislation, the existing Government Regulations and Procedures shall apply in the administration of the Fund.

Application of Government Regulations and Procedures.

24. (1) The Chief Executive Officer shall be designated as the administrator of the Fund.

Administration of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account into which all monies raised under the Fund shall be paid into;
- (b) operate and maintain the bank account in the manner as prescribed by the National Treasury from time to time;
- (c) supervise and control the administration of the Fund;
- (d) consult with the Advisory Board on matters relating to the administration of the Fund;
- (e) 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;
- (f) 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;
- (g) furnish any 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;
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettelement by the 10th day of every fourth month.
- (i) prepare estimates of revenue and expenditure and submit to the Advisory Board for consideration and recommendation for approval by the Cabinet Secretary; ;
- (j) prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan—
- (i) contains information on the financial and non-financial performance of the Fund; and
 - (ii) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time; and
- (k) prepare quarterly financial statements to the Advisory Board for onward transmission to the National Treasury.

Cap 421 C.

(2) 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.

PART V—FINANCE AND ADMINISTRATION

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya or a bank approved by the National Treasury.

Fund Bank Account".

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

(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) All withdrawals from the Fund shall be recommended by the Chief Executive Officer and authorized by the Advisory Board as reflected in the Fund's approved annual estimates of expenditure for that financial year.

Withdrawal of funds from the Fund

(2) All payments made from the Fund shall be on the basis of the approved annual estimates of expenditure.

PART IV—MISCELLANEOUS PROVISIONS

27. A 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 these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

28. 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 finance.

Winding-up of the Fund.

29. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form issued by the Officer Administering the Fund and by the contract between the Fund and the beneficiary.

Supplementary requirements.

30. The Advisory Board may from time to time recommend to the Cabinet Secretary any amendments to these Regulations.

Amendments to these Regulations.

31. (1) These Regulations shall apply to—

Persons to whom these Regulations shall apply.

(a) State Officers in the national government except state officers under the service of Judicial Service Commission and Parliamentary Service Commission; and

(b) Civil Servants under the service of Public Service Commission.

SCHEDULE

LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
State Officers	
Cabinet Secretary Attorney-General Secretary to the Cabinet Auditor-General	10 million
Principal Secretaries Chairs and Members of Independent Commissions Controller of Budget	8 million
Director of Public Prosecution	6 million
Register of Political parties Secretaries of Independent Constitutional Commissions, Accounting Officers/Chief Executive Officers of Government Agencies	5 million

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
Other Public Officers	
Chief Executive Officers of Government Agencies or Organs	5 Million
Civil Service Grades S, T, U and Equivalent grades in public service	4 Million
Civil Service Grades P, Q, R and Equivalent grades in the public service	3 Million
Civil Service Grades K, L, M, N and Equivalent grades in the public service	1.5 Million
Civil Service Grades G, H, J and Equivalent grades in the public service	800,000
Civil Service Grades A, B, C, D, E, F and Equivalent grades in the public service	600,000

Made on the 8th September, 2015.

HENRY K. ROTICH,
Cabinet Secretary for the National Treasury.