

# **PUBLIC FINANCE MANAGEMENT ACT, 2012**

**(No. 18 of 2012)**

## **THE PUBLIC FINANCE MANAGEMENT (CLIMATE CHANGE FUND) REGULATIONS, 2018**

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

### **PART I—PRELIMINARY**

- Citation.
1. These Regulations may be cited as the Public Finance Management (Climate Change Fund) Regulations, 2018.
- Interpretation.
2. In these Regulations, unless context otherwise requires—
- “Administrator of the Fund” means a person designated as such under regulation 10;
- “Act” means the Public Finance Management Act, 2012;
- “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;
- “climate finance” has the meaning assigned to it in the Climate Change Act, 2016;
- “Council” means the Climate Change Council established by section 5 of the Climate Change Act, 2016;
- “eligible costs” means direct expenses relating to an activity, project or programme that are agreed upon between the Fund and the recipient;
- “equity” means allocation or contribution, in cash or in kind, bestowed by the Fund to an eligible recipient as capital contribution on activities consistent with the mandate of the Fund and with specific terms and conditions detailed in the funding agreement in exchange for an ownership interest and the associated rights in respect of the relevant investment target;
- “Fund” means the Climate Change Fund established under Regulation 3;

“grant” means allocation or contribution bestowed by the Fund to an eligible recipient for either capital contribution or on project development activities, for an agreed set of deliverables consistent with the objects of the Fund and with specific conditions detailed in the grant agreement.

“loan” means an arrangement in which the Fund allocates, contributes, subsidizes or lends money to an eligible borrower for use as either capital contribution or on project development activities, consistent with the objects of the Fund and the borrower agrees to return the money, with interest, at a specified period in the future.

## **PART II—ESTABLISHMENT OF THE FUND**

Establishment of the Fund.

**3.** There is established a Fund to be known as the Climate Change Fund.

Capital of the Fund.

**4.** The initial capital of the Fund shall be 500 million shillings appropriated by Parliament in the financial year 2018/2019.

Sources of funds.

**5.** The Fund shall consist of—

- (a) monies appropriated by Parliament;
- (b) receipts from International Climate Funds;
- (c) grants from development partners;
- (d) fees for services rendered by the Fund and charges levied on assets or goods and services which are linked to climate change adaptation and mitigation;
- (e) interest from investments and loans disbursed from the Fund;
- (f) donations, bequests, endowments and gifts from any lawful source; and
- (g) commercial benefits arising from research products financed by the Fund as prescribed in these Regulations.

Object of the Fund.

**6.** The object of the Fund is to provide financing mechanisms to priority climate change actions and interventions and, specifically, to—

- (a) provide loans, grants or equity for climate change research and innovation, in the following fields—
  - (i) industrial research;
  - (ii) technological research;
  - (iii) policy formulation;
  - (iv) academic research; and
  - (v) development in green technologies;
- (b) provide loans, grants or equity to implementing agencies, businesses, industry, civil societies, academia and other stakeholders for development of innovative actions that benefit climate change responses in Kenya;
- (c) finance, through loans or grants, the implementation of climate change adaptation and mitigation actions;
- (d) provide technical assistance to county governments; and
- (e) provide training and capacity building on climate change.

Expenditure of the Fund.

**7.** (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the objects of the Fund.

(2) The expenditure 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 Council at the beginning of the financial year to which they relate.

(3) Any revision of the approved work programmes and of any cost estimates shall be approved by the Council.

(4) Funds provided under these Regulations shall not be used for supporting political parties and activities.

### **PART III—MANAGEMENT OF THE FUND**

Oversight by the Council.

- 8.** (1) The Council shall—
  - (a) provide overall oversight of the Fund;

- (b) approve the estimates of revenue and expenditure of the Fund for each financial year;
- (c) approve annual work programmes, annual procurement plans and the annual cash plans for the Fund;
- (d) approve the financial statements of the Fund prepared by the administrator of the Fund before they are submitted to the Auditor General for audit;
- (e) approve the strategic plans of the Fund;
- (f) set out procedures for application, disbursement, recovery and repayment of loans;
- (g) set out procedures to ensure gender and intergenerational equity in access to monies from the Fund;
- (h) approve disbursement of loans and grants;
- (i) approve technical assistance to county governments;
- (j) approve periodic financial and non-financial reports for deliberation and further directions to the secretariat;
- (k) approve performance reports of the Fund and submit to the President, with a copy to the Auditor General and the Cabinet Secretary; and
- (l) set out other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting of climate change finance and monitoring and evaluation procedures.

Administrator of the Fund.

**9.** (1) The administrator of the Fund shall be the accounting officer responsible for climate change.

(2) The administrator of the Fund shall—

- (a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank

to be approved by the Council and the National Treasury in accordance with the Act;

- (b) supervise and control the administration of the Fund;
- (c) prepare estimates and expenditures of the Fund and submit to the Council for approval;
- (d) prepare annual work plans, annual procurement plans and annual work flow plans and submit to the Council for approval;
- (e) consult with the Council and the Cabinet Secretary responsible for matters relating to climate change on matters relating to the administration of the Fund;
- (f) cause to be kept proper books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (g) prepare, sign and submit to the Council in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund for approval;
- (h) transmit to the Auditor-General the statement of accounts under paragraph (f), with a copy to the National Treasury and such statement shall be prepared in the manner prescribed by the Public-Sector Accounting Standards Board and audited in accordance with the Public Audit Act, 2015;
- (i) 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, 2015;
- (j) prepare quarterly reports on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for publication in the Gazette by 21<sup>st</sup> of every fourth month of the financial year;
- (k) ensure compliance with decisions of the Council and submit regular reports;
- (l) ensure timely and efficient disbursements of funds to various agencies implementing climate change

mitigation and adaptation programmes and initiatives approved by the Council;

(m) prepare statutory and management reports and submit them to the Council from time to time;

(n) be the custodian of all the assets, equipment and properties under the Fund;

(o) develop and implement the strategic plan; and

(p) any other function that may be assigned by the Council from time to time.

Secretariat of the Fund.

**10.** (1) There shall be a secretariat of the Fund which shall consist of such staff as are necessary for the proper discharge of the functions of the Fund.

(2) The staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.

(3) The head of the secretariat shall, subject to the direction of the Administrator of the Fund, be responsible for the day-to-day running of the affairs of the Fund.

Resource mobilization.

**11.** (1) The Council shall mobilize resources through—

(a) engagement with the communities, development partners and the private sector;

(b) engagement with the global multilateral climate change finances as envisaged under the Paris Agreement (2015); and

(c) development of bankable proposals on climate change adaptation and mitigation initiatives.

(2) any engagement with development partners, private sector or global funds shall be done within the framework specified by the Cabinet Secretary and in line with the Kenya External Resources Mobilization Policy and National Climate Finance Policy.

Funding guidelines.

**12.** The Council shall develop guidelines on the terms and conditions on which funding may be granted.

Policies, standard setting and norms.

**13.** (1) The National Government shall be responsible for the formulation of policy and norms and standard setting for climate change financing interventions.

(2) The secretariat of the Fund shall consolidate various policies, norms and standards and disseminate them to counties, government agencies and development partners, to facilitate their implementation.

(3) The secretariat shall prepare the Fund's investment plans and proposals for resource mobilization based on the national policies, norms and standards set by the National Government including guidelines which may be issued from time to time.

(4) The national norms and standards shall set sector specific quantifiable indicators for the outputs for each strategic objective, and shall form the basis of reporting on climate change response interventions for both national and county governments.

Eligibility for funding.

**14.** An activity, project or programme shall be eligible for funding if—

- (a) it is aligned to the objects of the Fund;
- (b) it is aligned to the Government policies on climate change;
- (c) its benefits can be sustained after the lifetime of the activity, project or programme;
- (d) it is efficient and effective; and
- (e) it conforms to existing legislation.

Application for funding.

**15.** (1) The Administrator of the Fund shall, through print or electronic media, call for proposals for the funding of activities, projects or programmes.

(2) A call for proposals shall indicate—

- (a) the purpose of the funding;
- (b) eligibility criteria for such funding;
- (c) where the application forms may be obtained;
- (d) the deadline for submission of applications;
- (e) the general outline for elaborating the concepts/idea; and

- (f) any other information that the Council may consider necessary.

(3) A person who wishes to receive funding from the Fund and meets the criteria set out in regulation 14 shall apply to the administrator of the Fund in such a manner as may be prescribed by the Council.

(4) An application under sub regulation (3) shall be accompanied by—

(a) a project proposal, which meets the following conditions—

(i) a project proposal shall be in the form prescribed by the Council and shall endorsed by an individual applicant or the head of the organization;

(ii) a project proposal shall stipulate the implementation time frame and where extensions are envisaged, it shall be indicated to inform the decision of the Council;and

(iii) the maximum duration prescribed by the Council may be varied under the individual call for project proposal depending on the budget available and restrictions set by the respective sources of funds.

(b) in the case of an infrastructure development project, project designs, plans and bills of quantities, approved by the governing body, and the requisite regulatory approvals from relevant government institutions;

(c) evidence that the activity in respect of which funding is required is to be undertaken in the country and is related to Climate Change initiatives;

(d) the details and signatories of the bank account in the name of the applicant where the funds shall be channeled;

(e) details of the activity, including—

(i) the outputs and outcomes of the proposed activity and the expected benefit to the environment;

(ii) the expected duration of the activity;

(iii) the human and other resources required;

- (iv) the related contribution of the applicant to the activity by the use of its own monetary and other resources;
- (v) targets and performance indicators of the activity;
- (vi) costing of the activity;
- (vii) details of the budget and related timelines for the activity;
- (viii) future projections and cost benefit analysis of the activity; and
- (ix) projects for which funding is already received or in respect of which an application has been made by the applicant together with the...

(f) In addition to the requirements in paragraph (a) to (d), organizations shall submit—

- (i) proof of incorporation or registration of the organization;
- (ii) the constitution or memorandum of association of the organization;
- (iii) the names, physical addresses and other contact details of the office holders of the organization; and
- (iv) membership of the organization.

Evaluation and approval of applications.

**16.** (1) Upon receipt of an application, the secretariat of the Fund shall undertake a technical and financial review of the application and shall take into account the following—

- (a) the funding already received by the applicant in respect of a similar activity and the meeting of the objectives of that funding;
- (b) the relevance of the activity to the promotion of Government policies and programmes;
- (c) the outcomes and outputs of the activity;
- (d) the operational costs as identified in the application;

- (e) the clarity of the administrative arrangements and related costs;
- (f) the extent of consultations with interested parties to identify and resolve conflicting objectives or duplication of effort or areas of collaboration;
- (g) the potential for overlap or duplication of funding from the Fund with funding from other sources received or receivable by the applicant; and
- (h) compliance with legal and regulatory requirements.

(2) The Fund Secretariat shall, upon the evaluation of the project proposed by the applicant, in writing—

- (a) certify the activity for the purposes of disbursement from the Fund; or
- (b) refuse to certify the activity and advise the applicant accordingly, with reasons.

(3) The secretariat of the Fund shall, upon evaluation of the proposals—

- (a) make recommendation for the funding of an activity, project or programme and submit the recommended proposal to a prequalified independent reviewer for review; or
- (b) reject an application for funding and advise the applicant accordingly, with reasons thereof.

(5) The independent reviewer shall review the pre-selected project proposals and rank them and submit a report on the pre-selected proposals to the secretariat.

(6) Upon receipt of the report from the independent reviewer, the secretariat shall submit to the Council the report as well as its recommendations on the activities, projects or programmes that should be approved by the Council for funding.

(7) Upon the approval of an activity, project or programme by the Council, the secretariat shall notify the successful applicants of the Council's decision.

Reviews.

**18.(1)** An applicant who is aggrieved by the rejection of his application by the Fund, may, in writing, request for a review

of the decision within thirty days of the receipt of the decision.

(2) An application for review shall state precisely the grounds upon which the review is sought.

(3) The Council shall determine the review within sixty days after the receipt of the applicant's request and shall in writing, notify the applicant of its determination.

Funding agreements.

**19.** (1) Within thirty days after the approval of an activity, project or programme by the Council, the Fund shall enter into a funding agreement with the recipient and the agreement

(2) The funding agreement under sub-Regulation (1), shall contain the following minimum requirements—

(a) the extent and purpose of the funding granted;

(b) the obligations of the recipient towards the implementation of the approved project as well the Fund Secretariat on the tracking, monitoring and evaluation of the activity, project or programme;

(c) the obligation of the recipient to display the Fund's logo on all correspondence or materials printed in connection with the activities financed by the Fund and to refer to the activity, project or programme as being financed by Fund;

(d) the obligation of the recipient to reimburse the Fund any portion of cash advance remaining unspent or uncommitted on completion of the approved project;

(e) the performance indicators and targets to be met as a condition for the disbursement of money from the Fund;

(f) a requirement for the repayment of money received by the recipient by way of restitution to the Fund if targets are not met;

(g) a license shall be granted in favor of the Government of the Republic of Kenya for the use of any copyright, patent, trademark or other intellectual property rights that may arise out of the approved project or in the name of the recipient organization or agency approved by both houses of Parliament;

- (h) a stipulation that upon completion of a project, the recipient shall provide a report on the activities undertaken and the expenditure incurred, and such report shall be forwarded to the Council;
- (i) conditions for cessation of disbursements from the Fund to a recipient;
- (j) a disbursement schedule that contains—
  - (i) the name of the certified activity, project or programme;
  - (ii) the name, address and registration number of the recipient together with the names and addresses of the authorized persons of the recipient;
  - (iii) the total amount recommended for disbursement by the Council;
  - (iv) percentages of disbursements to the approved projects; and
  - (v) the duration and schedule of payments to be made to the recipient and
- (k) any other information that may be prescribed by the Council.

Disbursement of funds.

**20.** (1) The disbursement of funds by the Fund shall be based on the disbursement schedule and workplan provided for in the funding agreement.

(2) Notwithstanding the authorization by the Council for the withdrawal of money from the Fund in respect of an approved activity, project or programme, an organization or agency shall not be entitled to receive such money unless the Council is satisfied that—

- (a) the recipient has opened an account with an approved financial institution or an approved Sacco, specifically for the purpose of receiving money in respect of the approved activity, project or programme and has stated the names of the persons duly authorized by the recipient;

- (b) the account is separate from any other account operated by the recipient and is maintained for the purpose of receiving funds from the Fund; and
- (c) a funding agreement in respect of the approved project has been executed by the Fund and the recipient.

Tracking, monitoring, reporting and verification.

- 20.**
- (1) Each project financed by the Fund shall be assigned a unique code for purposes of tracking, monitoring, reporting and verification.
  - (2) A recipient shall allow staff of the secretariat to track, monitor and evaluate the progress of the programmes, projects and activities funded by the Fund.
  - (3) Each recipient shall be required to submit to the Fund, performance, technical and financial reports on a quarterly basis, which reports shall include expenditures and the activities undertaken;
  - (4) A recipient shall be required to submit a draft final report not later than forty five days after completion of the activity, project or programme.
  - (5) The final report shall be submitted not later than ninety days after the completion of the approved activity, project or programme;
  - (6) All the reports submitted under this regulation shall include a statement of expenditures for the funds disbursed from the Fund and the balance thereof, if any;
  - (7) The secretariat shall consolidate all reports received from recipients of the Fund as appropriate and submit them to the Council;
  - (8) The secretariat may make any recommendations to the Council with regard to any activity, project or programme funded under this Fund;
  - (9) All reports approved by the Council shall be published and publicized in line with

provisions of the Act within fourteen days of approval;

(10) The tracking, monitoring and evaluation of activities, projects or programmes financed by the Fund shall be done in accordance with the following principles—

- (a) Independence;
- (b) Transparency;
- (c) Accountability;
- (d) Stakeholder participation;
- (e) Value for money; and
- (f) in line with the principles of national strategies.

Recovery of disbursed funds.

**21.** The Council may recover the amount disbursed in respect of approved project as a debt due to the Fund, where the Council reasonably believes that there has been—

- (a) a misapplication of money received from the Fund; or
- (b) a misuse of property acquired, wholly or in part, with the money disbursed from the Fund.

Service providers.

**22.** (1) The use of an implementing partner or a service provider may be allowed in instances where the applicant does not have the requisite technical and staffing capacity to implement the approved activity, project or programme.

(2) The implementing partners or service providers may be suggested by the recipient in accordance with the recipient's internal procedures and

(3) The recipient shall submit three names to secretariat or select from pre-qualified list provided by the Secretariat of the using, among others, the following general eligibility criteria—

- a) evidence of being a legally registered entity or recognized governmental or regional institution;
- b) demonstrable evidence of possessing technical expertise, competence, experience and delivery methodology in an intervention area relevant to the Fund; and
- c) Prior experience in effective implementation and management of similar projects

Eligible costs.

**23.** Eligible costs shall be as provided for in the project proposal, funding Agreement and the workplan approved by the Council.

Record of funded activities, projects or programmes.

**24.** (1) The Council shall cause records to be kept of all the approved project proposals in receipt of disbursements from the Fund;

(2) The Council shall cause continuous monitoring records to be kept of each approved activity, project or programme that is funded by the Fund to ascertain whether the approved project is being delivered in accordance with the funding agreement.

Projects designed by the Fund and financed wholly or jointly by county Governments.

**25.** (1) The county Government may design a project relating to a devolved function and submit it to the Fund for consideration and approval by the Council.

(2) Notwithstanding paragraph (1), the secretariat may design a project relating to a devolved function and engage the county Government for financing.

(3) Where a project has been designed under paragraph (2), the county government shall contribute a per centum to be agreed on in form of a matching grant, from time to time.

(4) Where a County Government has accepted to co-finance a project under paragraph (3), that county Government shall, in writing, notify the Administrator of the Fund.

(5) Where projects are financed under this regulation, the Secretariat of the Fund shall use such projects to build the capacity of the County on Climate Change programmes, projects and initiatives.

Matching funds.

**26.** (1) Projects financed under this Fund may be jointly financed.

(2) The Council shall prescribe guidelines on the joint financing of different categories of activities, projects or programmes.

## **PART V—FINANCIAL PROVISIONS**

Application of Government regulations & procedures.

**27.** Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund

Retention of receipts.

**28.** 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 objects for which Fund is established.

Bank Accounts.

**29.** (1) All bank accounts of the Fund shall be opened in accordance with section 28 of the Act.

(2) Any bank account of the Fund shall be opened upon approval of the Council and the National Treasury and shall be in the name of the Fund.

(3) The signatories to the Fund's bank accounts shall be the Administrator of the Fund and two other persons authorized by the Council from amongst the staff of the Fund.

(4) Every payment or instruction for payment out of the respective bank account shall be in accordance with the provisions of the Act.

Disbursement records to be kept.

**30.** (1) The Secretariat of the Fund shall keep and update, on a monthly basis, accurate records of all disbursements from the Fund accounts for financing approved activities, projects or programmes.

(2) The Administrator of the Fund shall submit to the Council, quarterly and annual reports on all activities, projects or programmes approved and financed by the Fund.

Quarterly reports.

**31.** (1) The administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the Act, and as may be prescribed from time to time by Public Sector Accounting Standards Board and submit them to the Council for approval.

(2) Upon approval by Council the reports in sub-regulation (1) shall be published and publicized in accordance with the Act and copies submitted to National Treasury, the Commission on Revenue Allocation and the Controller of Budget.

Quarterly reports on Projects and Disbursement.

**32.** The Council shall, on a quarterly basis, submit reports to the Cabinet Secretary responsible for matters relating to climate Change with a copy to the National Treasury, detailing—

(a) a summary of the projects approved by the Council in the preceding quarter as recommended by the Fund

secretariat and the funding status of such projects, if any;

- (b) a summary of the status disbursements of funds to the various projects and the implementation progress;
- (c) a summary of the status of disbursements from the Fund to respective county Governments or any recipient involved in the implementation of any projects financed by the Fund; and
- (d) any restriction imposed on a county Government or any other recipient involved in the implementation of the projects of the Fund.

Disbursement and accountability for funds.

**33.** (1) The Council shall, from time to time, formulate guidelines for the disbursement of funds.

(2) Where the Council intends to use faith based organizations or non-governmental organizations or community based organizations it shall ensure that the guidelines for disbursements of funds to these institutions has clear roles and responsibilities for reporting and accounting of the resources disbursed to the institutions.

Annual Reports.

**34.** (1) The Fund Administrator shall prepare financial and non-financial reports in accordance with the provisions of the Act, and as may be prescribed from time to time by the Public-Sector Accounting Standards Board.

(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund and submit it together with the report under sub-regulation (1).

(3) The annual financial and non-financial statements under sub-regulation (1) shall be approved by the Council and submitted to the Auditor General for audit in accordance with the Public Audit Act, 2015.

Administration Costs.

**35.** (1) The administration costs of the Fund shall not exceed three percent of the total budget of the Fund in each financial year.

(2) Despite sub-regulation (1), the costs of running the Secretariat may be varied by the Cabinet Secretary on the advice of the Council.

Preparation and approval of work plans, etc.

**36.** (1) At the beginning of each financial year, the Fund Administrator shall prepare and submit to the Council for approval—

- (a) an annual procurement plan;
- (b) an annual cash flow plan; and
- (c) an annual work plans.

(2) Any revision of any of the plans referred to in sub-regulation (1) shall be approved by the Council.

Approval of Reports.

**37.** The Work Plans, Projects and progress reports shall be prepared by Fund Administrator before submission to the Council.

## **PART V—MISCELLANEOUS PROVISIONS**

Offence and Penalty.

**38.** 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 fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

Failure to comply with regulations or Funding Agreement.

**39.** The failure by a recipient to comply with a condition of the disbursement from the Fund as specified in these Regulations or in the funding agreement may result in—

- (a) immediate cessation of funding;
- (b) institution of debt recovery proceedings; and
- (c) the exclusion of the recipient from further funding by the Fund.

Guidelines on the Fund.

**40.** The Council shall in consultation with the Cabinet Secretary, develop guidelines for the proper management of the Fu

Winding-up of the Fund.

**41.** (1) In the event of winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to climate change; and

(b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the National Government in the National Exchequer Account with the approval of National Assembly.

(2) The administrator of the Fund shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund and submit the financial and non-financial reports to Parliament and the Auditor General for audit with a copy to the National Treasury.

(3) The Auditor General shall after be undertaking an audit submit the final report to the National Assembly within 3 months of receipt of the report under sub-regulation (2).

Made on the.....2018

**HENRY ROTICH**  
*Cabinet Secretary for the National Treasury and Planning*

DRAFT