

(Legislative Supplement No. 91)

LEGAL NOTICE NO. 213

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 and Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

1. These Regulations may be cited as the Public Finance Management (Financial Inclusion Fund) Regulations, 2022. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “Act” means the Public Finance Management Act, 2012; No. 18 of 2012.
 - “Administrator of the Fund” means a person designated as such under regulation 17(1);
 - “association” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012; No. 55 of 2012.
 - “Board” means the Advisory Board established under regulation 10 (1) of these Regulations;
 - “borrower” means a person in receipt of a financial service or product advanced to that person by the Fund;
 - “bottom of the pyramid” means a socio-economic group of persons with low disposable income;
 - “Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;
 - “*chama*” means a registered group of persons pursuing common objectives by pooling resources together to empower one another economically;
 - “cooperative society” has the meaning assigned to it under section 2 of the Cooperative Societies Act, 1997; No. 12 of 1997.
 - “credit scoring” means a statistical analysis performed by the Fund or an agent or a financial intermediary to determine the creditworthiness of an applicant to qualify for subsequent and enhanced financial service or product under this Fund;
 - “eligible person” means a person with low disposable income or a registered micro, small and medium enterprise, a *chama*, group, table banking group, a cooperative society or an association intending to take

a financial product or service to start a business or enhance an existing business;

“enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012;

“financial intermediary” means a micro-finance institution, a cooperative society, a *chama*, a group or an association that holds funds from the Fund for on-lending;

“financial product” means a financial instrument including a loan which may be advanced by the Fund to an eligible person under these Regulations;

“financial service” includes health insurance, retirement benefit scheme, universal health coverage and universal social security which may be offered by the Fund to an eligible person under these Regulations;

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

“Fund” means the Financial Inclusion Fund established under regulation 3;

“group” means a registered self-help group with a common interest or whose aim is to organize itself to work together or act together to achieve an economic objective;

“medium enterprise” has the meaning assigned to it under section 2 of the Act;

“micro enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012;

“on-lending” means lending of a financial service or product by a financial intermediary to a member or a third party on conditions determined by the Board;

“small enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012; and

“table banking” means a group-based funding system where members of a group make periodic monetary contributions to form a kitty from which members may borrow.

PART II — ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Financial Inclusion Fund.

Establishment of the Fund.

4. The Fund shall consist of—

Sources of the Fund.

- (a) monies appropriated by the National Assembly for the purposes of the Fund;
- (b) income generated from the proceeds of the Fund in form of interest and other charges such as penalties;
- (c) income from investments made by the Fund;

- (d) grants, donations, bequests or other gifts made to the Fund; and
- (e) monies from any other source approved by the Cabinet Secretary.

5. (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 limited to annual budget estimates prepared by the Administrator of the Fund and recommended by the Board to the Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) for approval and submission to the Cabinet Secretary for further approval, at the beginning of the financial year to which they relate.

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

6. The capital of the Fund shall be as appropriated by the National Assembly or from any other source provided for under regulation 4 of these Regulations.

Capital of the Fund.

7. (1) The object and purpose of the Fund shall be to innovate, develop and deploy bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and under-served persons, including credit, saving, insurance and investment products.

Object and purpose of the Fund.

(2) Without prejudice to the generality of paragraph (1), the objects and purpose of the Fund shall be to—

- (a) promote financial inclusion through expanding access to credit by persons, micro, small and medium enterprises, *chamas*, table banking groups, groups, cooperative societies, associations and start-ups for economic growth and job creation;
- (b) address the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial literacy;
- (c) strengthen the financial and operational capacity of informal sector membership based financial institutions including cooperative societies, *chamas*, table banking groups and micro-finance institutions;
- (d) promote market interventions to improve supply of affordable credit to Micro, Small and Medium sized Enterprises (MSMEs) including creditworthiness based lending, risk pricing, business and financial management skills, and cost of doing business;
- (e) address the low participation of the non-formal wage workforce, namely informal sector entrepreneurs and

workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and

- (f) provide for government counterpart funding for the savings for pension component for beneficiaries, who shall be natural persons, of the Fund.

8. (1) The Fund shall ensure that its products and services are commercially viable, rapidly scalable at reasonable cost and low operational risk without distorting the market.

Delivery of
Products and
Services.

(2) In facilitating the provision under paragraph (1), the Fund shall leverage on existing commercial infrastructure, including mobile payments platforms and financial institutions, including agency, co-financing and on-lending partnerships:

Provided that such partnerships are not exclusive or preferential, are technology neutral and do not confer market advantage to any partners over competitors.

9. The Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) shall be responsible for—

Role of the
Cabinet Secretary
in charge of
MSMEs.

- (a) providing overall policy direction in implementation of the Fund;
- (b) appointment of members of the Board under regulation 10(1)(e);
- (c) appointment of the Chief Executive Officer under regulation 14(1);
- (d) providing regular briefs to the Cabinet on the status of implementation of the Fund;
- (e) approval of the estimates of expenditure and revenue before submission to the Cabinet Secretary;
- (f) receipt of quarterly and annual financial and non-financial reports of the Fund; and
- (g) receipt of any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

PART III — MANAGEMENT OF THE FUND

10. (1) There is established a board to be known as the Advisory Board which shall consist of—

Advisory Board.

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or his representative, designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and

medium enterprises or his representative, designated in writing;

- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to cooperatives or his representative, designated in writing;
- (e) three other persons, not being public officers, who shall be appointed by the Cabinet Secretary for the time being responsible for matters relating to micro, small and medium enterprises; and
- (f) the Administrator of the Fund, who shall be the Secretary of the Board and an *ex-officio* member.

(2) The Board may invite any person to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter but such a person shall have no right to vote at the meeting.

(3) The Chairperson and members of the Board appointed under paragraph (1)(a) and (1)(e) respectively shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

(4) The quorum necessary for transaction of the business of the Board shall be a simple majority of the members.

(5) The conduct and regulation of the business and affairs of the Board shall be determined by the Board.

11. (1) A person shall be eligible for appointment as the Chairperson of the Board under paragraph 10(1)(a) if that person—

Qualifications of members of the Board.

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has leadership and management experience of not less than ten years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) economics;
 - (iv) law;
 - (v) enterprise development;
 - (vi) cooperative management;
 - (vii) information, communication and technology;
 - (viii) business and management; or
 - (ix) strategic management.
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Board under paragraph 10(1)(e) if that person—

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has leadership and management experience of not less than five years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) Economics;
 - (iv) enterprise development;
 - (v) cooperatives management;
 - (vi) information, communication and technology;
 - (vii) business and management;
 - (viii) law; or
 - (ix) strategic management; and
- (c) meets the requirements of Chapter Six of the Constitution.

12. The Chairperson or a member of the Board appointed under regulation 10(1) (a) and (e) shall cease to hold office if—

Vacation of office by Chairperson or a member of the Board.

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) absent from three consecutive meetings of the Board without permission from the appointing authority;
 - (ii) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) convicted of an offense involving dishonesty or fraud;
 - (iv) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (v) incapacitated by prolonged physical or mental illness;
 - (vi) otherwise unable or unfit to discharge his duties; or
- (c) he dies.

13. The Board shall—

Functions of the Board.

- (a) provide oversight on the administration of the Fund;
- (b) approve operational policies to facilitate the attainment of the objects and purpose of the Fund;
- (c) determine additional disbursement conditions as the Board may consider necessary;

- (d) participate in the formulation of operational policy, regulation and programmes of the Fund to address systemic financial market failure and malpractices including predatory lending and pyramid schemes;
- (e) develop operational policies to guide on—
 - (i) savings for borrowers, who shall be natural persons, of the Fund;
 - (ii) financial services and products under regulation 18 of these Regulations to operationalize the Fund;
 - (iii) the eligibility criteria, online application procedure, credit scoring, approval, disbursement and repayment of loans;
 - (iv) the development of loan management systems and solutions which among others will include database of loan beneficiaries, loans disbursed, amounts recovered and balances;
 - (v) capacity building in respect of eligible persons of the Fund; and
 - (vi) access and conduct of financial intermediaries;
- (f) review and approve the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for micro, small and medium enterprises for approval and submission to the Cabinet Secretary for approval;
- (g) set the criteria and conditions for accessing the various financial services including the rate of interest or administrative fee and recovery of financial services or products; in furtherance of the objects and purpose of the Fund;
- (h) monitor and evaluate the implementation and performance of the Fund;
- (i) promote access to the services of the Fund to all Kenyans in all parts of the Republic;
- (j) review and approve the financial statements of the Fund before submission to the Auditor General;
- (k) review and approve operational policy on the management of assets, equipment and all properties under the Fund;
- (l) mobilize resources for the Fund;
- (m) approve the opening and closing of bank accounts of the Fund by the Administrator of the Fund;
- (n) advise the Cabinet Secretary for the time being responsible for micro, small and medium enterprises generally on the operations of the Fund;

- (o) determine the allocation criteria that will ensure equitable distribution of financial products across the country, including the target number of eligible persons to be advanced loans in any one particular year; and
- (p) undertake any other activity that in the opinion of the Board, will promote and facilitate realization of the objects and purpose of the Fund.

14. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

Chief Executive
Officer of the
Fund.

(2) The Board shall recommend three persons from whom one shall be appointed under paragraph (1).

(3) Where a substantive Chief Executive Officer has not been appointed, the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall appoint a public officer to act as the Chief Executive officer.

(4) A person shall not be appointed as Chief Executive officer, unless that person—

- (a) holds a degree in either economics, accounting, finance or any other relevant degree from a recognized institution;
- (b) has ten years of work experience of which five years shall be in senior management level in a relevant field; and
- (c) meets the requirement of Chapter Six of the Constitution.

(5) A person appointed as a Chief Executive Officer shall hold office—

- (a) for a term of four years subject to renewal for a further one term of four years; and
- (b) on such terms and conditions as may be determined by the Cabinet Secretary responsible for matters relating to micro, small and medium enterprises in consultation with the Cabinet Secretary and the Salaries and Remuneration Commission.

15. The Chief Executive Officer of the Fund shall cease to hold office if—

Vacation of office
by Chief
Executive Officer.

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (ii) convicted of an offense involving dishonesty or fraud;
 - (iii) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(iv) incapacitated by prolonged physical or mental illness;

(v) otherwise unable or unfit to discharge his duties; or

(c) he dies.

16. (1) There shall be a secretariat of the Fund headed by the Chief Executive Officer.

Secretariat of the Fund.

(2) The staff of the secretariat shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

(3) Where the Secretariat has not been constituted as envisaged under paragraph (1), the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall second public officers to perform the duties of the Secretariat.

17. (1) The Administrator of the Fund shall be the Chief Executive Officer appointed under regulation 14(1).

Administrator of the Fund.

(2) In administering the Fund, the Administrator of the Fund shall—

(a) open and operate such bank accounts with the approval of the Board and the National Treasury;

(b) supervise and control the day-to-day administration of the Fund;

(c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects and purpose of the Fund;

(d) consult with the Board on matters relating to the administration of the Fund;

(e) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;

(f) with the approval of the Board, outsource services and enter into and sign commercial contracts or agreements in furtherance of the objects and purpose of the Fund;

(g) be the custodian of the assets and properties of the Fund;

(h) open loan accounts of all successful applicants or financial intermediaries and maintain a record of the amount disbursed and the balance thereof;

(i) 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 showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Act and Public Audit Act, 2015;

(j) prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector

No. 34 of 2015.

Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and

- (k) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

18. (1) The financial services or products of the Fund shall include the following—

Categories of financial services or products.

- (a) loans;
 (b) retirement benefits;
 (c) health insurance benefits; and
 (d) savings.

(2) The Fund shall leverage on credit scoring model to determine the creditworthiness of an eligible person to qualify for subsequent and enhanced financial services or products.

19. Further to the eligibility criteria set in these Regulations, an eligible person may qualify for a financial product or service under these Regulations —

Eligibility conditions.

- (a) where an applicant is a natural person, if that person—
 (i) is eighteen years of age and above; and
 (ii) is a holder of a Kenyan national identification card.
 (b) where an applicant is a micro, small and medium enterprise, a cooperative society, *chama*, a group, a table banking group or any other association, if that applicant—
 (i) has all members who are eighteen years of age and above; and
 (ii) is registered by the relevant government institution.

20. A financial intermediary may apply and enter into a lending agreement for a loan from the Fund for on-lending to a business person or micro, small and medium enterprises.

Lending to financial intermediary for on lending.

21. (1) Where a financial intermediary enters into a lending agreement with the Fund under regulation 20, that financial intermediary may provide matching funds of at least the amount that may be determined by the Board.

Matching funds by financial intermediary.

(2) A financial intermediary shall pay an interest or administrative fee as may be determined by the Board, but where the financial intermediary provides matching funds under paragraph (1), the interest or administrative fee shall be lower compared to where no matching funds are provided.

22. The interest or administrative fee payable by a beneficiary on a financial service or product advanced under these Regulations shall be at a maximum rate of eight per centum per annum on reducing balance:

Interest or administrative fee on financial services or products.

Provided that where a beneficiary defaults, the interest or administrative fee payable shall be nine and one half per centum on a reducing balance.

23. (1) A financial product or service advanced under these Regulations shall be repaid in full within the period determined in the agreement.

Repayment.

(2) All sums due to the Fund shall be recoverable as a debt due to the Fund.

24. (1) The Administrator of the Fund shall open the main bank account at the Central Bank of Kenya.

Bank accounts for the Fund.

(2) The Administrator may open such other bank accounts in the Central Bank of Kenya or commercial banks including trust accounts, or pension saving accounts with the approval of the Board and the National Treasury to further the objects and purpose of this Fund.

25. The Administrative costs of the Fund shall be met through appropriations of the State Department responsible for matters relating to Micro, Small and Medium Enterprises.

Administration costs.

26. The existing government financial and procurement Regulations shall, to the extent they relate to the administration of public funds established under the Act, apply in the administration of the Fund.

Government financial Regulations.

27. The Administrator of the Fund may invest any of the funds of the Fund which are not immediately required for its purposes in such government securities as may be approved by the Board under these Regulations.

Investment of funds.

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 the purposes of the Fund.

Retention of receipts and earnings.

29. (1) The Administrator of the Fund shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the Administrator of the Fund shall submit to the Auditor General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

30. (1) A public officer who—

Offences and penalties.

- (a) takes possession of the funds or assets of the Fund without lawful authority;

- (b) misappropriates funds or assets of the Fund;
- (c) causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations;
- (d) conceals information on finances of the Fund to obtain a financial benefit either for the officer or another person; or
- (e) engages in a corrupt act,

that public officer commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

(2) An applicant or an agent of the Fund who fails to give proper information or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations to obtain a financial benefit, either for himself or herself or for another person, that applicant or agent commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

31. No matter or thing done by the Chairperson or any member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of these Regulations, render the chairperson, member, officer, employee or agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

Protection from
personal liability.

32. In the event of winding up of the Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the National Treasury.

Winding up.

Made on the 23rd November, 2022.

NJUGUNA NDUNG’U,
*Cabinet Secretary for the National
Treasury and Economic Planning.*