

THE PUBLIC FINANCE MANAGEMENT ACT, 2012
(No. 18 of 2012)

**THE PUBLIC FINANCE MANAGEMENT (KENYA MILLENNIUM
DEVELOPMENT FUND) REGULATIONS, 2024**

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LEGAL NOTICE NO.

THE PUBLIC FINANCE MANAGEMENT ACT, 2012
(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 (KENYA MILLENNIUM DEVELOPMENT FUND) REGULATIONS, 2024

PART I—PRELIMINARY

Citation. **1.** These Regulations may be cited as the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024

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

“accounting Officer” has the meaning assigned to it under section 2 of the Act;

“bank account” means commercial bank account of the Fund;

“Board” means the Board of Fund established under Regulation 11;

“Cabinet Secretary” means the Cabinet Secretary for the National Treasury;

“Chief Executive Officer” means a person appointed as such under Regulation 17;

“fiscal agent” means one or more individuals or a firm with expertise in financial management engaged to perform certain financial management activities on behalf of the Fund;

“Fund” means the Kenya Millennium Development Fund, a legally and operationally independent fund designated by the Government to oversee and implement the Threshold Program;

“Government” means the Government of Kenya;

“Grant Agreement” means the Millennium Challenge

Corporation Threshold Program Grant Agreement signed between the Government of Kenya and the Government of the United States of America;

“implementing entity” means a government ministry, department, agency, bureau, affiliate, government corporation, or any other entity chartered or established by the Government, or by a County Government that are engaged by the Fund to play a role in achieving or sustaining the project objectives as defined in the Grant Agreement;

“MCC” means the Millennium Challenge Corporation, a United States Government Corporation established under the Millennium Challenge Act of 2003, as amended (the “MCA Act”), and an implementing agency of the United States of America; and

"operating unit" has the same meaning as defined in the Grant Agreement.

“Threshold Program” means the projects and activities funded under the Grant Agreement.

PART II—ESTABLISHMENT KENYA MILLENNIUM DEVELOPMENT FUND

Establishment of Fund.

3. There is established a Fund to be known as the Kenya Millennium Development Fund which shall be the vehicle for implementation of the Threshold Program on behalf of the Government.

Object and purpose of the Fund.

4. (1) The object and purpose of the Fund is to exercise and perform the Government’s obligation to oversee, manage and implement the Threshold Program.

(2) Without prejudice to the generality of subparagraph (1), the object of the Fund is, *inter alia*, managing the implementation of the projects and their activities, allocating resources for the projects set out in the Grant Agreement, and managing procurements.

Sources of the Fund.

5. The Fund shall consist of—

- (a) such moneys as may be granted for the Threshold program under the Grant Agreement;
- (b) monies appropriated by the National Assembly for the Government; and
- (c) grants, other than that provided under the Grant Agreement and donations, as approved by MCC and the Board.

Capital of the

6. The initial capital of the fund shall be a sixty million

Fund. dollars grant from the Millennium Challenge Corporation provided in accordance with the terms of the Grant Agreement, and any other funds and resources that are necessary to carry out the Government's responsibilities and obligations under the Grant Agreement.

Expenditure of the Fund. **7.** (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuant of the Threshold Program and in accordance of the Grant Agreement.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work plans and cost estimates which shall be prepared by the Chief Executive Officer of the Fund and approved by the Board, in accordance with the Grant Agreement requirements.

(3) Any revision of the approved annual work plan, and of any cost estimate, shall be referred to the Board for approval in accordance with the Grant Agreement.

(4) Funds provided under these Regulations shall not be used for the purpose of supporting activities outside the Grant Agreement.

Administration of the Fund. **8.** (1) The Board shall have legal and operational independence to oversee the Threshold Program.

(2) The Board shall be able to—

- (a) perform the Government's rights and responsibilities under the Grant Agreement and bind the Government to the full extent of such rights and responsibilities;
- (b) make its own budget and expend the grant funding provided under the Grant Agreement;
- (c) open and operate a bank account at a commercial bank in Kenya;
- (d) supervise and control 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 in accordance with the Grant Agreement;
- (f) sue and be sued in its own name;
- (g) enter into, be bound by and enforce contracts in its own name, with private and public entities including MCC, any Implementing Entity, employees, service providers and consultants;
- (h) engage any Implementing Entity and delegate certain powers and activities to such in accordance with the Grant

Agreement;

- (i) insure against all normal commercial risks associated with its activities;
- (j) engage an external fiscal agent to perform certain financial management activities;
- (k) engage an external procurement agent to carry out and certify specific procurement activities in furtherance of the Threshold program;
- (l) oversee all procurements for goods, works, and services required to implement the Threshold Program in accordance with the MCC Program Procurement Guidelines, as contemplated in section 4 (2) (f) of the Public Procurement and Asset Disposal Act, 2015;
- (m) conduct or cause to be conducted on an annual basis (or on a more frequent basis if required under the Grant Agreement) financial audits in accordance with MCC's Accountable Entity Guidelines for Contracted Financial Audits;
- (n) provide 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 accordance with the requirements of the Grant Agreement;
- (o) furnish additional information which is proper and sufficient for the purpose of examination and audit by an independent auditor required in accordance with the Grant Agreement including to MCC's Office of Inspector General and by the Auditor- General; and
- (p) prepare a quarterly report on the performance of the Fund and submit it to the Board during each quarterly meeting.

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(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.

Retention of receipts.

9. All deposits made to the bank account shall be retained by the Fund and used for the purpose for which the Fund is established, subject to applicable provisions of the Grant Agreement.

Fiscal accountability and compliance.

10. The grant shall be managed in accordance with Section 2.5, Section 4.4 and Section 5 of the Grant Agreement.

PART III—ESTABLISHMENT AND COMPOSITION OF THE BOARD

11. (1) There is established a board to be known as the Kenya Millennium Development Fund Board which shall be a body corporate.

(2) The Board shall consist of—

- (a) a chairperson appointed by the President from among the three members appointed at (f) below;
- (b) the Cabinet Secretary for the time being responsible for matters relating to The National Treasury;
- (c) the Principal Secretary for the time being responsible for matters relating to transport;
- (d) the Principal Secretary for the time being responsible for matters relating to urban planning;
- (e) the Attorney-General;
- (f) three non-government members, one each selected by the Kenya Private Sector Alliance, Kenya Alliance of Residents Associations, and Maendeleo ya Wanawake Organization and appointed by the Cabinet Secretary for the time being responsible for matters relating to the Fund; and
- (g) the Chief Executive Officer who shall be a member without the right to vote at the meetings of the Board; and

(3) The appointments under sub-regulation (2)(a) and (e) shall be by notice in the *Gazette*.

(4) Each member of the Board appointed under sub-regulation (2) (f) above shall be selected by the respective non-government organization and shall not be selected by the Government.

(5) Each member of the Board appointed under sub-regulation (2)(b), (c), (d), and (e) above shall have an alternate with clear decision-making authority who is drawn from the same institution, is designated in writing, and can attend Board meetings when such member cannot attend.

(6) Each member of the Board appointed under sub-regulation (2)(f) above shall have an alternate with clear decision-making authority who is drawn from the same institution, selected through the same internal selection process, is designated in writing, and can attend Board meetings when such member cannot attend.

(7) The tenure of the members of the Board appointed under sub-regulation (2)(a) and (f) shall each be for a period not exceeding three years which may be renewed only once for a

period not exceeding three years.

Qualification for appointment to the Board.

12. A person shall be eligible to be appointed as the chairperson or a member of the Board, if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has proven financial management or other relevant professional experience;
- (c) has served in a management position for a period of at least six years; and

Functions of the Board.

13. (1) The Board shall—

- (a) take responsibility for the proper management of the affairs of the Fund and shall be accountable for the moneys, the financial business and the management of the Fund;
- (b) oversee and provide direction to the Fund, and ensure that the Fund's operations unit is composed of qualified experts from the public or private sectors who are hired through an open and competitive recruitment and selection process;
- (c) protect, preserve and manage the assets financed under the Grant Agreement and ensure that the funding provided by MCC under the Grant Agreement is used for its intended purposes;
- (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 in accordance with the Grant Agreement;
- (e) ensure that regular audits of the Fund are conducted by an independent auditor as required by the Threshold program Grant Agreement (or as may otherwise be agreed by MCC and the Board), and that statutory annual audits of the Fund are conducted by the Auditor General;
- (f) follow the Fund's governing documents and regulations, including its mission to implement the Grant Agreement;
- (g) supervise and control the administration of the Fund;
- (h) perform the rights and responsibilities under the Grant Agreement and bind the Government of Kenya to the full extent of such rights and responsibilities;
- (i) open and operate a bank account at a commercial bank in Kenya;

- (j) keep written minutes of all meetings held by the Board, which will reflect all decisions made and all actions taken;
- (k) ensure that the Fund's records and accounts are accurate and complete;
- (l) ensure that regular audits of the Fund by an independent auditor are performed annually; and
- (m) consider and approve the following documents, agreements and actions on behalf of the Fund—
 - (i) procurement plans, fiscal accountability plans, M&E plans, Accountable Entity Anti-Fraud & Corruption Action Plans, Human Resource instruments, and any material amendments or supplements thereto;
 - (ii) agreements between the Government of Kenya or the Fund and MCC, and any material amendment, suspension or termination of such agreements;
 - (iii) agreements (and any material amendment, suspension, or termination of such agreements) between the Fund and any third-party auditor, the fiscal agent, the Procurement Agent, any bank, any implementing entity, any outside project manager, or any Board member;
 - (iv) the selection, performance evaluation, and termination of the Chief Executive Officer;
 - (v) the human resources instruments, including the organizational chart, staff grading, remuneration structure (salary grid), career guidelines (position descriptions) and human resources policy (including a Human Resources Manual);
 - (vi) the Fund policies, Board charter and any other Board guidelines;
 - (vii) form of employment agreement to be used for members of the operations unit;
 - (viii) the Fund's organizational staffing plan, and any material amendments or supplements thereto;
 - (ix) salary grid or scale with approved salary ranges and benefits for members of the operations unit, and any material amendments or supplements thereto;
 - (x) any adoption of an alternative performance evaluation system and related amendments to the Human Resource instruments, and any material changes to a previously-approved alternative performance evaluation system;

- (xi) Audit findings and reports of the results of audits received from the audit committee;
- (xii) any agreement that is with a party related to the Fund or any party that controls, is controlled by, or is under common control with the Fund, or not at arm's length (that is, the parties are not dealing from equal bargaining positions, one party is subject to the other's control or dominant influence, or the transaction is not treated with fairness, integrity, and legality);
- (xiii) any material amendments or supplements to the Fund's governing documents;
- (xiv) any decision to dispose of, liquidate, dissolve, wind up, or reorganize the Board, including any decision to add or remove any Board member;
- (xv) any formation or acquisition of a subsidiary or other related entity of the Fund;
- (xvi) any material changes to the components or structure of the Fund;
- (xvii) any decision to engage, accept, or manage any funds from any donor agencies or donor organizations in addition to MCC's funding during the term of the Grant Agreement; and
- (xviii) any other action that requires Board approval pursuant to the Grant Agreement.

Procurement of goods, works and services.

14. The Board shall ensure that all procurements for goods, works, and services required to implement the Threshold Program are undertaken solely in accordance with the MCC Program Procurement Guidelines.

Meetings and procedure of the Board.

15. (1) The conduct and regulation of the business of the Board shall be as provided for in the Board Charter .

(2) The conduct and regulation of the business and affairs of the Board shall be as stipulated under the Fund's internal regulations and the Grant Agreement.

Chief Executive Officer.

16. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively recruited and appointed by the Board for a period not exceeding five (5) years or until the Threshold program comes to closure, whichever may be the earlier. The five year tenure would however be extended by the Kenya Millennium Development Fund Board for any period requiring closure of the Threshold program.

(2) A person shall be qualified to be appointed as the Chief Executive Officer, if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience in financial management;
- (c) has served in a senior management position for a period of at least five years; and

(3) The Chief Executive Officer shall be responsible for—

- (a) the day-to-day operations of the Fund;
- (b) for supervision, management and discipline of the staff of the operations Unit.;
- (c) executing the policies of the Board in respect of the mandate of the Fund;
- (d) reporting to the Board on the performance of Fund; and
- (e) performing any other functions as may be assigned by the Board from time to time.

Record of disbursements to be kept.

17. (1) The Chief Executive Officer shall maintain an accurate record of all payments from the Fund for financing approved projects, and such record of payments shall be updated every quarter or as required by the Board and in accordance with the Grant Agreement.

(2) The Chief Executive Officer shall submit to the Board quarterly and annual reports on the Fund's activities, operations and expenditures.

Corporation Secretary.

18. (1) There shall be a Corporation Secretary to the Fund who shall be competitively recruited and appointed by the Board.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) is a Certified Public Secretary (CPS) and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has previously held the position of corporation secretary or in a similar governance role for a period of at least five years; and

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the Board and Board members on their duties, responsibilities and powers and how these should be exercised in the best interests of the Fund;
- (b) ensuring that Board procedures are followed and reviewed regularly, and that the Board complies with the law, rules and regulations;
- (c) assisting the Chairperson in organising Board activities, including providing information, preparing agenda, issuing notices and preparing for meetings, Board evaluations and Board development program;
- (d) providing secretarial services to the Board, including ensuring that the Board work plan is prepared and adhered to, circulating Board papers in advance of the meeting, keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the Board and Board committees are promptly prepared and circulated;
- (f) keeping the Board abreast of and informed on, current governance thinking and practice;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) coordinating the governance audit process.

Staff of the -
Operations Unit.

19. (1) The Board may appoint such number of professional, technical and administrative staff for the operations Unit.

(2) The staff appointed under subparagraph (1) shall serve on such terms and conditions as the Board may determine.

PART IV—FINANCIAL PROVISIONS

Financial year.

20. The financial year of the Fund shall be the period of twelve months ending on the 30th June in each year.

Annual estimates.

21. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of its revenue and expenditure for that year.

(2) The annual estimates shall make provision for the estimated expenditure of the Fund for the financial year concerned and, in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Board;
- (c) the proper maintenance of the buildings and grounds of

the Fund; and

(d) the proper maintenance, repair and replacement of the equipment and other movable property of the Fund.

(3) The annual estimates shall be approved in accordance with the Threshold Program Grant Agreement

(4) No expenditure shall be incurred for the purposes of the Fund except in accordance with the Threshold Program Grant Agreement

(5) Government shall provide office space and finance its operations for the duration of the Fund.

Books of accounts.

22. The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Fund.

Accounts and audit.

23. (1) In addition to the audit requirements set out in the Grant Agreement, the accounts of the Fund shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under sub-regulation (1) the accounts of the Fund together with—

(a) a statement of income and expenditure of Fund during that year; and

(b) a statement of the assets and liabilities of the Fund on the last day of the financial year.

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(3) In addition to the audit requirements set out in the Grant Agreement , the accounts of the Fund shall be audited in accordance with the provisions of the Public Audit Act, 2015 .

(4) The appointment of an auditor under sub-regulation (1) shall not be terminated by the Board without the prior written consent of the Auditor-General.

(5) The Auditor-General may give general or special directions to an auditor appointed under sub-regulation (1) and the auditor shall comply with those directions.

(6) An auditor appointed under sub-regulation (1) shall report directly to the Auditor-General on any matter relating to the directions given by the Auditor-General.

(7) Within six months after the end of each financial year, the Auditor-General shall report on the examination and audit of the

accounts of the Funds to the Cabinet Secretary and, in the case of an auditor appointed under sub-regulation (1), the auditor shall transmit a copy of the report to the Auditor-General.

(8) Nothing in this Order shall be construed to prohibit the Auditor-General from carrying out an inspection of Fund's accounts or records whenever it appears desirable and the Auditor-General shall carry out such an inspection at least once every six months.

(9) The Cabinet Secretary shall lay the report prepared under sub-regulation (7) before the National Assembly as soon as reasonably practicable after the report has been submitted to him or her.

PART V—MISCELLANEOUS PROVISIONS

Close-out of the
Grant Agreement

24. At the close out of the Grant Agreement, any cash balances on the grant shall be returned promptly to MCC, while other assets of the Fund shall be disposed in accordance with the Grant Agreement and the MCC Program Closure Guidelines.

Made on the, 2024.

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