

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (PUBLIC PROSECUTIONS FUND) REGULATIONS, 2024

PART I

Name of instrument: Public Finance Management (Public Prosecutions Fund) Regulations, 2024.

Name of Parent Act: The Public Finance Management Act (*No. 18 of 2012*).

Enacted Pursuant to: Section 24(4) of the Public Finance Management Act, 2012

Name of Ministry: The National Treasury & Economic Planning/ Office of Director of Public Prosecutions

Gazetted on: To be advised by the Hon. Attorney-General

Tabled on: To be advised by the Clerk National Assembly

PART II

1. Purpose of the Statutory Instrument

The purpose of this Statutory Instrument is to establish a Fund to be known as the **Public Prosecutions Fund** whose objects and purpose shall be to provide funds to support the Office of Director of Public Prosecutions, and in particular: -

- a. support and facilitate the tracing, forfeiture, or recovery of assets;
- b. support and facilitate other government agencies collaborating or assisting the Office in tracing, forfeiture, or recovery of assets;
- c. facilitates the preservation of assets in the custody of the investigating agency;

- d. supports the development and operationalization of a centralized case management and information system;
- e. support mechanisms and measures to enhance the efficiency and effectiveness of the Office.

2. Legislative Context

The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012.

The Regulations are therefore developed within the meaning of Section 24 (4) of the Public Finance Management Act 2012 and the procedure for public participation provided under the Statutory Instrument Act, 2013.

3. Policy Background

- 3.2 The Office of the Director of Public Prosecutions (ODPP) is Kenya's national prosecuting authority, established under Article 157 of the Constitution of Kenya, 2010 and is given effect by the Office of the Director of Public Prosecutions Act, 2013. The mandate of the ODPP is to institute and undertake prosecution of criminal matters, in all courts other than court-martial, and all other aspects incidental thereto.
- 3.3 In exercising prosecutorial authority, the ODPP shall have due regard to the public interest, interests of the administration of justice, and the need to prevent and avoid abuse of the legal process. In doing so, the ODPP prevents and avoids abuse of the legal process. The ODPP strives to provide quality, impartial, and timely prosecution services in a manner that is professional, efficient, and fair.
- 3.4 The ODPP faces several challenges, including new and emerging crime trends and technological advancement in science, information, and communication. In addition, the complexity in the administration of justice arising from constitutional imperatives, new laws, human rights considerations, and diversity in criminal

activity and international circumstances needs to be taken into account.

- 3.5 Towards this end, the ODPP has deployed several measures in the fight against graft and other transnational organized and complex crimes. The ODPP is not only determined to prosecute suspects but also to **recover stolen funds and proceeds of crime** for the benefit of the Kenyan people. The proceeds of crime that have been unlawfully acquired will be traced, recovered, confiscated, and restored through plea bargaining, diversion, deferred agreements, compensation, and restitution.
- 3.6 The said Public Prosecution Fund, will receive these **proceeds of crime** and use them for supporting the criminal justice system in Kenya and in particular the objectives highlighted in paragraph 1 above.

4. Guidance

The National Treasury and Economic Planning and Office of the Director of Public Prosecutions shall sensitize the National Assembly, the general public, and various stakeholders on the objectives of the Public Prosecutions Fund.

5. Stakeholder Consultations

The Task force responsible for the preparation and development of the Regulations held targeted consultations with key stakeholders and their input was taken into account before the finalization of these Regulations.

These included The National Treasury and Economic Planning, the Office of the Inspector General of Police, the Office of the Director of Public Prosecutions, and the Office of the Attorney-General and Department of Justice.

In line with the provisions of Section 5 of the Statutory Instruments Act, 2013, the National Treasury together with the Office of the Director of Public Prosecutions, undertook public participation before publication of these Regulations.

The mode of public participation included the invitation of key stakeholders via an advertisement posted on the National Treasury website and published in the **My Gov** section of Nation and Standard Newspapers on 8th October 2024. Written responses/submissions on the Regulations were sent to ps@treasury.go.ke and jona.wala@treasury.go.ke

6. Review

The National Treasury shall monitor the application of the Regulations. This shall be done through the quarterly and annual reports prepared by the Fund and forwarded to the National Treasury.

7. Contact

The contact person shall be the Cabinet Secretary or Principal Secretary, The National Treasury & Economic Planning.

Made on the.....8/10/2024.



HON. CPA JOHN MBADI NG'ONGO, EGH
Cabinet Secretary for the National Treasury & Economic Planning