



LEGAL NOTICE NO.....

ARRANGEMENT OF REGULATIONS

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SCHEDULES

THE PUBLIC FINANCE MANAGEMENT ACT (CAP. 412A)	
<p>IN EXERCISE of the powers conferred by section 24 (4) of the Public Finance Management Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—</p>	
THE PUBLIC FINANCE MANAGEMENT (DISASTER RISK MANAGEMENT FUND) REGULATIONS, 2024	
PART I—PRELIMINARY	
Citation.	<p>1. These Regulations may be cited as the Public Finance Management (Disaster Risk Management Fund) Regulations, 2024.</p>
Interpretation.	<p>2. In these Regulations, unless the context otherwise requires—</p>
Cap. 412A	<p>“Act” means the Public Finance Management Act;</p>
	<p>“Administrator of the Fund” means a person designated as such under regulation 12;</p>
	<p>“Board” means the Disaster Risk Management Fund Advisory Board established under regulation 10;</p>
	<p>“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;</p>
Cap. 265	<p>“County Government” has the meaning assigned to it under the County Governments;</p>
	<p>“Early warning information” means data obtained from an early warning system.</p>

	<p>“Early warning statement” means a statement informed by information released from an early warning system;</p>
	<p>“Early warning system” means an integrated system of hazard monitoring, forecasting and prediction, disaster risk assessment, communication and preparedness activities systems and processes that enables individuals, communities, governments, businesses and others to take timely action to reduce disaster risks in advance of hazardous events;</p>
	<p>“disaster” means progressive or sudden, widespread or localised, natural or human caused occurrence or disruption of the functioning of a community, which causes or threatens to cause—</p> <p>(a) death, injury or disease to human or living things;</p> <p>(b) damage to property, infrastructure or the environment,</p> <p>resulting to economic or environmental losses and impacts which exceed the ability of the affected community to cope with its effect using its own resources;</p>
	<p>“Disaster risk management” means the application of disaster risk reduction policies and strategies to prevent new disaster risk, reduce existing disaster risk and manage residual risk, contributing to the strengthening of resilience and reduction of disaster losses;</p>
	<p>“Fund” means the Disaster Risk Management Fund established under regulation 4;</p>
	<p>“mitigation” means structural or non-structural measures undertaken to reduce the adverse impact of disaster;</p>
	<p>“National Government” includes National Government Ministries, State Departments or agencies and Constitutional Commissions, Independent Offices for the time being responsible for disaster risk management;</p>

	<p>“preparedness” means the knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions;</p>
	<p>“recovery” means restoration and improvement, where appropriate, of facilities, livelihoods and living conditions of communities affected by disasters including reduction of disaster risk factors;</p>
	<p>“response” means the provision of emergency services and public assistance during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the affected people.</p>
Scope of Regulations.	<p>3.(1) These Regulations shall apply to National and County Governments in disaster risk management for purposes of reducing exposure to fiscal economic associated with disasters and undertaking risk reduction measures that reduce underlying vulnerabilities.</p>
<i>L.N.No 27 of 2021.</i>	<p>(2) Despite paragraph (1), these Regulations shall not apply to drought related disasters provided for under the Public Finance Management (National Drought Emergency Fund) Regulations, 2021.</p>
	<p>PART II – ESTABLISHMENT OF THE DISASTER RISK MANAGEMENT FUND</p>
Establishment of the Fund.	<p>4. There is established a Fund to be known as the Disaster Risk Management Fund.</p>
Objects and purpose of the Fund.	<p>5.(1) The object and purpose of this Fund shall be to mobilize resources towards efficient and effective disaster risk management.</p>
	<p>(2) Without prejudice to the generality of paragraph (1), the Fund shall—</p>

	<ul style="list-style-type: none"> (a) provide a common basket for receipt and disbursement of funds for disaster risk management; (b) facilitate institutions in disaster preparedness, mitigation, response and recovery including early warning systems, disaster risk financing, disaster reduction, climate change adaptation and resilience building; (c) provide financing mechanisms for timely, transparent and accountable disaster risk management; (d) support capacity development of institutions mandated with disaster risk management; and (e) perform any other function as approved by the Board that may enhance the development and promotion of disaster risk management in the country.
Sources of the Fund.	6. The Fund shall consist of—
	<ul style="list-style-type: none"> (a) such monies as maybe appropriated by the National Assembly; (b) grants or donations for the purposes of the Fund; (c) income generated from the proceeds of the Fund; (d) interest accruing to the Fund; and (e) any monies accruing to or received by the Fund from any other lawful source.
Initial capital of the Fund.	7. The initial capital of the Fund shall be Five Billion shillings appropriated by the National Assembly.
Apportionment of the Fund.	8.(1) The Fund shall be apportioned as follows—
	<ul style="list-style-type: none"> (a) an amount not exceeding seventeen <i>per centum</i> (17%) to disaster mitigation and preparedness; (b) an amount not exceeding fifty <i>per centum</i> (50%) to disaster response; (c) an amount not exceeding thirty <i>per centum</i> (30%) to disaster recovery; and

	(d) an amount not exceeding three <i>per centum</i> (3%) of the approved budget as the administration costs of the Fund.
	(2) Despite paragraph (1), the Board may recommend to the Cabinet Secretary the variation of thresholds in paragraph (1) (a) and (d) in favour of paragraph (1) (b) and (1)(c).
Expenditure of the Fund.	9.(1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.
	(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programs and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.
	(3) Any revision of the approved annual work programs and any cost estimate shall be referred to the approval.
	PART III – MANAGEMENT OF THE FUND
Establishment of the Advisory Board.	10.(1) There is established an Advisory Board to be known as the Disaster Risk Management Fund Advisory Board.
	(2) The Board shall consist of—
	(a) a non-executive chairperson, appointed by the President;
	(b) the Principal Secretary for the time being responsible for matters relating to disaster management;
	(c) the Principal Secretary for the time being responsible formatters relating to finance;
	(d) the Principal Secretary for the time being responsible formatters relating to internal security;
	(e) the Principal Secretary for the time being responsible formatters relating Defence;

	<p>(f) the Principal Secretary for the time being responsible formatters relating to Health;</p> <p>(g) three persons, being public officers, nominated by the Council of Governors who are responsible for matters relating to disaster management, finance or public administration; and</p> <p>(h) three persons who are not public officers appointed by the Cabinet Secretary for the time being responsible for disaster management.</p>
	<p>(3) The members of the Board appointed under paragraph 2 (b), (c), (d), (e) and (f) may attend in person or through a representative nominated in writing.</p>
	<p>(4) The Cabinet Secretary responsible for disaster management shall, in appointing members of the Board specified under paragraph 2 (h), take into account affirmative action, gender equity, disability and ethnicity pursuant to the requirements of Articles 27, 54 and 55 of the Constitution.</p>
	<p>(5) The chairperson and members of the Board appointed under paragraph (2) (a), (g) and (h) shall subject to regulations 12 and 13 serve for a term of three years but may, subject to satisfactory performance, be eligible for re-appointment for one further term of three years.</p>
	<p>(6) The Board may, from time to time co-opt other members as it may deem necessary, for the proper and efficient discharge of its functions, for such period as the Board may consider necessary.</p>
	<p>(7) The procedure for the conduct of the meetings of the Board shall be in the manner set out in the First Schedule.</p>
Qualification of the chairperson and members of the Board.	<p>11.A person shall be eligible for appointment as a chairperson or a member of the Board under regulation 10 (2) (a) and (h), if that person -</p> <p>(a) has at least a university degree from a university recognized in Kenya;</p>

	<p>(b) has professional experience of not less than ten years in any of the following fields—</p> <ul style="list-style-type: none"> (i) disaster risk management; (ii) finance; (iii) public administration; (iv) law; or (v) any other relevant field; and <p>(c) satisfies the requirements of Chapter Six of the Constitution.</p>
Vacancy in office.	<p>12.The office of the chairperson or a member appointed under regulation 10 (2) (a), (g) and (h) may become vacant, if the holder—</p> <ul style="list-style-type: none"> (a) dies; (b) resigns from office by notice, in writing, addressed to the appointing authority; (c) is convicted of a criminal offence and sentenced to a term of imprisonment; (d) is adjudged bankrupt; (e) term of office expires; or (f) is removed from office for any of the grounds provided under regulation 13 (1).
Removal from Office.	<p>13. (1) The chairperson or a member appointed under regulation 10 (2) (a), (g) and (h) may be removed from office by the appointing authority, if that person has been convicted of an offence for a period exceeding six months without the option of a fine;</p> <ul style="list-style-type: none"> (a) commits gross misconduct, whether in the performance of the office holder’s functions or otherwise; (b) is unable to perform the functions of the Office for physical or mental incapacity; (c) is incompetent or neglects his duty; (d) is absent from three consecutive meetings of the Board without permission from the Chairperson of the Board; (e) violates the Constitution or any other written law; or

	<p>(f) is otherwise unable or unfit to discharge the functions of office.</p> <p>(2) Before the appointing authority makes a decision under regulation 13 (1), the appointing authority shall be guided by the provisions of the Fair Administrative Action Act, Cap 7L.</p>
Filling of vacancy.	<p>14. If a vacancy occurs in the membership of the Board pursuant to any ground specified under regulation 12 or 13, the appointing authority may, if the vacancy relates to any of the positions specified under regulation 10 (a) (g) and (h) appoint a new member in accordance with these Regulations within a period of six months.</p>
Functions of the Advisory Board	<p>15. (1) The functions of the Board shall be to—</p>
	<p>(a) provide oversight on the administration and management of the Fund;</p>
	<p>(b) formulate policies to achieve the objects and purpose of the Fund;</p>
	<p>(c) consider, review and approve estimates of revenue and expenditure of the Fund for each financial year;</p>
	<p>(d) give approval for the opening of any bank account in accordance with section regulation 32;</p>
	<p>(e) receive, review and approve statutory and management reports of the Fund before submission to the Auditor-General with copies to the National Treasury and Controller of Budget;</p>
	<p>(f) advise the Cabinet Secretary responsible for matters relating to disaster management on the proper administration of the Fund;</p>
	<p>(g) monitor and evaluate programs and activities of the Fund;</p>
	<p>(h) mobilise resources for the Fund;</p>
	<p>(i) set disaster response threshold for disbursement of the Fund;</p>
	<p>(j) develop a criteria for funding arrangements with third parties; and</p>
	<p>(k) perform such other duties for the proper administration and management of the Fund.</p>

<p>Administrator of the Fund.</p>	<p>16.(1) The administrator of the Fund shall be the Principal Secretary for the time being responsible for matters relating to disaster management or any other person designated by the Cabinet Secretary in writing, for that purpose.</p>
<p>Cap.412B</p>	<p>(3) The Administrator of the Fund shall—</p> <ul style="list-style-type: none"> (a) open and operate a designated bank account at the Central Bank or a commercial bank approved by the Board and the National Treasury in accordance with the Act; (b) supervise and control the administration of the Fund; (c) keep proper books of accounts in relation to the fund; (d) prepare, sign and submit to the Board in respect of each financial year and within three months, after the end thereof, a statement of accounts related to the Fund for approval in accordance with the provisions of the Act and the Public Audit Act, Cap 412B; (e) prepare and submit to the Board quarterly and annual reports on financial and non-financial performance of the fund in accordance with the provisions of the Act; and (f) be the custodian of all the assets, equipment, and property of the Fund.
	<p>(2) In exercising its functions, under sub-regulation (1), the Board may require an entity to provide additional information and documentation to access the Fund.</p>
<p>Appointment of chief executive officer</p>	<p>17. (1) The Board shall, through a competitive recruitment process, identify and shortlist three successful persons in order of merit and forward the names to the Cabinet Secretary for the time being responsible for matters relating to Disaster Risk Management to appoint one of them to be the Chief Executive Officer of the Fund.</p>
	<p>(2) A person shall not be qualified for appointment as the chief executive officer under</p>

	paragraph (1) unless that person—
	<ul style="list-style-type: none"> (a) holds at least a degree from a university recognized in Kenya in the field of Disaster Management economics, finance, natural resources or any other relevant field; (b) has at least ten years practical experience in senior management capacity; and (c) satisfies the requirements of Chapter Six of the Constitution.
	(3) The chief executive officer of the Fund shall hold office for a term of three years and shall be eligible for re- appointment for one further term of three years.
	(4) The chief executive officershall be the Secretary to the Board and shall be responsible for the day today running of the Fund including the staff of the secretariat of the Fund.
Secretariat of the Fund.	18. (1) The Board shall designate a secretariat to support the operations of the Fund which shall be headed by the Chief Executive Officer.
	(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to disaster management may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations.
	(3) Despite paragraph (2), the public service Commission may second officers to the Fund to provide secretariat services.
	PART IV— CRITERIA FOR ACCESSING THE FUND
Access to the Fund.	19. (1) Subject to regulation 6, the Fund shall be accessed for the following phases of disaster risk management— <ul style="list-style-type: none"> (a) mitigation; (b) preparedness; (c) response; and (d) recovery.

	(2) The National Government and County Governments shall be eligible for funding on any of the phases of disaster risk management specified under paragraph (1), subject to satisfying the requirements specified under regulations 19,20,21 or 22 and any other requirements that the Board may determine from time to time.
	(3) In determining eligibility under this regulation, the Board shall also consider the levels of disaster as specified under the Second Schedule.
Obligations of National Government.	20. (1) The National Government shall manage disasters in accordance with paragraph 24 of Part 1 of the Fourth Schedule of the Constitution
	(2) Despite paragraph (1) the National Government shall be responsible for disasters specified in level 3 of the Second Schedule.
Obligations of County Governments.	21. (1) Each County Government shall manage disasters in accordance with paragraph 12 of Part II the Fourth Schedule of the Constitution.
	(2) Despite paragraph (1), each County Government shall be responsible for disasters specified in levels 1 and 2 of the Second Schedule.
Disaster mitigation.	22. (1) Upon release of the annual budget circular by the National Treasury, the Fund Administrator shall issue a Circular on Disaster mitigation measures to be mainstreamed by the National Government and County Government during the planning and budgeting process.
	(2) Despite paragraph (1), a request for funding of activities on disaster mitigation shall include- (a) a vulnerability and risk assessment report;

	<ul style="list-style-type: none"> (b) proof that the activity does not duplicate existing efforts; (c) proof that a funding gap exists, approved budget estimates, approved work plan; and (d) proof that the activity will prevent or reduce the impact or consequences of a disaster.
Disaster preparedness.	<p>23. (1) An early warning statement by the concerned Cabinet Secretary or the County Executive Committee Member for the relevant county government shall precede a request for funding contemplated under paragraph (2).</p>
	<p>(2) Despite paragraph (1), a request for funding on disaster preparedness shall -</p> <ul style="list-style-type: none"> (a) include the strategic plan, contingency plans, sector policies or strategies which have been prioritised for disaster preparedness; (b) be based on disaster early warning information; (c) demonstrate that it will facilitate effective response; (d) proof that it does not duplicate existing efforts; and (e) proof that a funding gap exists.
Disaster response.	<p>24. (1) Where a disaster has been declared by the President, a request for funding of activities on disaster response shall –</p> <ul style="list-style-type: none"> (a) be based on the occurrence of a disaster that has resulted or is likely to result in loss of lives or livelihoods; (b) be based on proof that the magnitude of the disaster has reached the threshold for disbursement determined by the Board as specified in the second Schedule; (c) be upon declaration of a disaster by the President; and (d) contribute towards saving lives and livelihoods, reduce the impacts on affected sectors and fiscal burden.
Disaster recovery.	<p>25. (1) A request for funding for disaster recovery shall be made at the conclusion of the response phase of the disaster, the containment of the disaster and during the period of transition.</p>

	(2) Notwithstanding paragraph (1), where recovery and response phases are overlapping, requests for funding shall be assessed on a case-by-case basis.
	(3) Subject to paragraph (1), a request for funding of activities on disaster recovery shall include— (a) demonstration of loss of livelihoods or productive assets as a result of a disaster; and (b) relevant post-disaster needs assessment report.
Procedure for making request for funding.	26. (1) An institution may make a request for funding under Regulations 22, 23, 24 and 25 which request shall— (a) be made, in writing or in electronic form, or in any other form as the Board may specify; and (b) be addressed to the Fund Administrator.
	(2) The Administrator of the Fund shall evaluate the request for funding and make recommendations for consideration by the Board.
	(3) On receipt of the request and the recommendations under paragraph (2), the Board may require an institution to provide additional information and documentation.
	(4) The Board shall evaluate and approve the funding request received under this Regulation.
	(5) the Administrator of the Fund shall, in writing, communicate the decision of the Board within seven days of that decision.
	(6) Despite these Regulations, a request for funding of activities under regulation 21 on disaster response shall be considered and communicated, in writing, within twenty-four hours of receipt of the request.

Operational procedures for disbursement and accountability.	27. The Board shall formulate administrative guidelines on disbursement and accountability of Funds in accordance with these Regulations.
	PART V — FINANCIAL PROVISIONS
Application of Government regulations and procedures.	28. Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.
Financial year of the Fund.	29. The financial year of the Fund shall be the period of twelve months ending on the 30 th of June of every year.
Preparation and submission of a work plan	30. The Administrator of the Fund shall prepare and submit to the Board for approval a Budget and work plan the financial year.
Withdrawal from the Fund.	31. (1) Withdrawal from the Fund shall only be for purposes of approved use or investment of surplus funds.
	(2) The Administrator of the Fund shall keep an up-to-date record of all expenditures and disbursements of the Fund maintained in accordance with the provisions of the Act and Regulations made thereunder.
Opening of Bank account.	32. (1) The accounts shall be held for and on behalf of the Fund and shall be in the name of the Disaster Risk Management Fund.
	(2) The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.
Investment of Funds.	33. The Administrator of the Fund may, with the approval of the Board, and in consultation with the Cabinet Secretary invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Act.

Annual reports.	34. (1) The Administrator of the Fund shall prepare quarterly and annual reports in accordance with the provisions of the Act.
	(2) In addition, the Administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted together with the report referred to under paragraph (1).
Annual estimates	35. At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year in accordance with the Act.
Retention of receipts.	36. 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 purpose for which the Fund is established.
Audit. <i>cap 412B</i>	37. The books of accounts of the Board shall be prepared, audited and reported in accordance with Articles 226 and 229 of the Constitution, the Act and the Public Audit Act.
	PART VI— MISCELLANEOUS PROVISIONS
Conflict of interest.	38. The Board shall not hold any interest in any property of the Fund other than in their capacity as Board members of the Fund or be interested in the supply of work, goods or services to the Fund or any other non-pecuniary conflict of interest
Offences and penalties.	39. (1) 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, on 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.
Personal liability	40. The Chairperson, or member of the Board or staff of the Secretariat shall not be liable for any action, suit or

	proceedings for or in respect of any act done or omitted to be done in good faith in the exercise of the functions, powers and duties conferred under these Regulations.
Winding-up of the Fund.	41. The Fund may be wound up in accordance with the provisions of the Act.

FIRST SCHEDULE

(r.10(7))

**PROVISIONS ON THE CONDUCT OF THE MEETINGS OF
THE BOARD**

Convening of meetings

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The Chairperson shall, in consultation with the Administrator of the Fund—
 - (a) determine the agenda of the meetings of the Board including the date, time and venue of the meeting;
 - and (b) convene and chair its meetings.
- (3) In the absence of the Chairperson at a meeting of the Board, the members present shall elect from their number a member to chair the meeting.

Special meetings

2. The Chairperson shall, on the written requisition of one-third of the members of the Board, convene a special meeting of the Board.

Notice of meetings

3. Except in the case of a special meeting referred to under paragraph 2, the Chairperson shall issue, at least fourteen days written notice of a meeting of the Board to each member of the Board.

Quorum

4. The quorum for the conduct of the business of a meeting of the Board shall be two thirds of the members of the Board:

Attendance by non-members

5. The Board may invite a person who is not a member of the Board to attend and participate at a sitting of the Board but such person shall not be entitled to vote.

Other procedures

6. Except as provided in this Schedule, the Board may regulate its own procedure

SECOND SCHEDULE

(r. 19(3))

LEVELS FOR DISASTER EVENTS

Level 1	Localized disaster events dealt within the regular operating mode of the protective, emergency and health services in Villages, Wards and Sub-County.
Level 2	Disaster events that overwhelm the capacity of the resources in Sub-County, but which do not overwhelm the capacity of the County resources to respond and recover.
Level 3	Disaster events that overwhelm a County and require mobilizing national resources to respond and recover.
Level 4	Disaster events that overwhelm the existing National response capacity, thus prompting the President to seek Regional/International assistance to support the country in response and recovery.

NOTE:

1. The levels for disaster management in the matrix areas specified in the National Disaster Risk Management Policy and the existing laws.
2. Disaster occurrence and effects are sector specific and the responsibility for managing sector related disaster risks shall be guided by the functional assignment of both levels of government as specified in the Fourth Schedule to the Constitution.
3. For purposes of this schedule, If a County has utilized more than 10% of the sum appropriated, it shall be considered as having been overwhelmed.

4. The responsibility for managing disaster risks which are specific to function assigned to the counties lies with County Governments and a disaster that is within level 1 or 2 is the responsibility of the county government.
5. A disaster that is within the functions assigned to County Governments under the Fourth Schedule of the Constitution and is within level 3, the national government shall provide the necessary leadership and intervention in consultation with the respective county government. However, the functional responsibility remains with the level of government to which it is assigned as per the Fourth Schedule of the Constitution.
6. A disaster that is within the exclusive functions assigned to the National Government under the Fourth Schedule of the Constitution, and falls under levels 3-4, shall be the responsibility of the National Government.

Made on the....., 2024.

Hon.CPA John Mbadi Ng'ongo, EGH
Cabinet Secretary for the National Treasury and Economic Planning.