

LEGAL NOTICE NO. 194

THE PUBLIC FINANCE MANAGEMENT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND) REGULATIONS, 2018

PART I-PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018.

Citation.

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

Interpretation.

“Administrator of the Fund” means a person designated as such under regulation 11;

“Board” means the Sports, Arts and Social Development Fund Oversight Board constituted in accordance with regulation 8;

“Fund” means the Sports, Arts and Social Development Fund established under regulation 3; and

“Government implementing agency” means a government agency established by legislation and whose mandate extends to the promotion of the objects and purposes of this Fund.

PART II – ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Sports, Arts and Social Development Fund.

Establishment of the Fund.

4. (1) The Fund shall consist of—

Sources of the Fund.

(a) all the proceeds required to be paid into the Fund under section 69A of the Betting, Lotteries and Gaming Act;

Cap. 131

(b) all the proceeds required to be paid into the Fund under section 35 (5A) of the Income Tax Act;

Cap. 470.

(c) all the proceeds required to be paid into the Fund under section 36 (5) of the Excise Duty Act, 2015;

(d) such moneys as may be appropriated by the National Assembly;

(e) grants and donations;

- (f) income generated from the proceeds of the Fund; and
- (g) any moneys accruing to or received by the Fund from any other source.

(2) The proceeds of the Fund shall be apportioned as follows—

- (a) an amount not exceeding sixty percent to social development including universal health care;
- (b) an amount not exceeding thirty five percent to the promotion and development of sports;
- (c) an amount not exceeding twenty percent to the promotion and development of arts; and
- (d) an amount not exceeding five percent to government strategic interventions whose expenditure shall be subject to approval by Cabinet.

(3) The Cabinet Secretary may, on the advice of the Board, vary the apportionments specified in paragraph (2) of this regulation.

5. (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.

Expenditure on the Fund.

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

(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.

6. The initial capital of the Fund shall be twenty million Shillings appropriated by Parliament in the financial year 2018/2019.

Capital of the Fund.

7. (1) The object and purpose of the Fund is to provide funding to support the development and promotion of sports and arts and the promotion of social development including universal health care.

Objects and purpose of the Fund.

(2) Without prejudice to the generality of paragraph (1), the Fund shall provide for—

- (a) promote social development including universal health care;
- (b) financing the development of sports and recreation facilities including stadia, gymnasiums, buildings, tracks;
- (c) enhancing support and access to funding for sportspersons and sports organizations to enable their participation in sporting events and competitions;
- (d) facilitation for the acquisition and provision of equipment to sports and recreation facilities;
- (e) support for the identification, nurturing and development of talent in sports and arts;

- (f) facilitation of training and capacity building programmes for persons involved in sports and recreation, creative arts, artistic production, contemporary and cultural practitioners;
- (g) facilitation for the identification, development and capacity building of technical personnel and sports support personnel involved in sports and recreation;
- (h) support for the promotion and development of artistic production of contemporary or cultural goods and services;
- (i) facilitation for the marketing and promotion of artistic productions and contemporary or cultural goods and services;
- (j) support linkages with domestic, regional and international markets for sports, artistic productions and contemporary or cultural goods and services;
- (k) facilitation for exhibition and promotion of contemporary or cultural artistic production of goods and services for national identity and pride;
- (l) financing the acquisition, development and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools; and
- (m) facilitate innovation, research and documentation in arts, culture and the creative industry, sports and social development.

### PART III — MANAGEMENT OF THE FUND

8. (1) There is established a Board to be known as the Sports, Arts and Social Development Fund Oversight Board.

Establishment of the Sports, Arts and Social Development Fund Oversight Board.

- (2) The Board shall consist of—
  - (a) the Principal Secretary for the time being responsible for matters relating to finance;
  - (b) the Principal Secretary for the time being responsible for matters relating to sports;
  - (c) the Principal Secretary for the time being responsible for matters relating to arts;
  - (d) the Principal Secretary for the time being responsible for matters relating to health



- (e) the Principal Secretary for the time being responsible for matters relating to education;
- (f) one person not being a public officer nominated by the Cabinet Secretary responsible for sports with competence in matters relating to sports;
- (g) one person not being a public officer nominated by the Cabinet Secretary responsible for health with competence in matters relating to health; and
- (h) one person not being a public officer nominated by the Cabinet Secretary with competence in matters relating to finance.

(3) The persons nominated under paragraph (2) (f), (g) and (h) shall be appointed by the Cabinet Secretary.

(4) The President shall appoint one of the members appointed under this regulation to be the Chairperson of the Board.

(5) In the absence of the Chairperson in any meeting of the Board, the members present shall elect one of the members under paragraph (2)(a) to (e) present to chair the meeting.

(6) The members under paragraph (2)(a) to (e) may attend in person or through a designated representative.

(7) The Board may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its oversight functions over the Fund.

(8) The quorum for the conduct of meetings of the Board shall be four members.

(9) The Board shall regulate its own procedure.

9. A person shall be eligible for appointment as a member of the Board under regulation 8(2) (a) and (e) if that person—

Qualifications of members of the Advisory Board.

- (a) holds a university degree from a recognized university in Kenya;
- (b) has knowledge and experience of not less than ten years in any of the following fields—
  - (i) sports management;
  - (ii) administration;
  - (iii) finance;

- (iv) law;
- (v) accounting;
- (vi) Health; or
- (vii) economics; and

(c) meets the requirements of Chapter Six of the Constitution.

10. The Board shall—

Functions of the Board.

- (a) provide overall oversight of the Fund;
- (b) approve the ceilings for funding under sports, arts and social development in each financial year;
- (c) develop policy guidelines relating to disbursements by the Fund;
- (d) prescribe other guidelines for the administration of the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary responsible for Sports for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the fund priorities and criteria for allocation and disbursement of funds to implementing agencies in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) facilitate and develop sectoral linkages to the Fund;
- (i) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (j) review and approve the financial statements of the Fund before submission to the Auditor General;
- (k) review policy on the management of assets, equipment and all properties under the Fund;
- (l) receive reports on the performance of the Fund; and
- (m) any other activity that in the opinion of the Board, will promote and facilitate the realization of the objects and purposes of the Fund.

(2) The Oversight Board shall prepare and submit a quarterly report to the Cabinet Secretary responsible for finance on the

performance of the Fund with copies to the Cabinet Secretaries responsible for sports, arts, health and education.

(3) The Cabinet Secretary responsible for finance shall prepare and submit a quarterly report to the Cabinet on the performance of the Fund.

11. (1) The administrator of the Fund shall be the accounting officer responsible for matters relating to sports or any other person designated by the Cabinet Secretary, in writing, for that purpose.

Administration of  
the Fund.

(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 Board and the National Treasury in accordance with the Act;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records relating to all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, upon the approval by the Board, 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 such a manner as the Accounting Standards Board shall prescribe in accordance with the provisions of the Public Finance Management Act and Public Audit Act;
- (f) furnish additional information to the Auditor General as he or she may consider to be 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;
- (g) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Public Finance Management Act, 2012, and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and the Controller of Budget; and
- (h) be the custodian of all the assets, equipment and properties under the Fund.

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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 quarter concerned.

12. (1) There shall be a secretariat of the Fund which shall consist of a Chief Executive Officer and such other staff as are necessary for the proper discharge of the functions of the Fund.

Secretariat.

(2) The Chief Executive Officer and other staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.

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

(4) Parliament shall appropriate administration expenses not exceeding three percent of the annual budgetary allocations of the Fund.

13. A sports organization, professional sports person or government implementing agency shall be eligible to apply for funding from the Fund if—

Funding eligibility criteria.

(a) in the case of a sports organization if the organization—

(i) is registered under the Sports Act, 2013;

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(ii) has an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;

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

(iv) meets any other criteria prescribed by the Board.

(b) for a professional sportsperson, he or she —

(i) has a valid license issued under the Sports Act, 2013;

(ii) has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally; and

(iii) meets any other criteria prescribed by the Board.

- (c) for a government implementing agency the agency—
- (i) is established by legislation;
  - (ii) has an annual work programme aligned to the strategic plan of the agency and the medium term plan approved by the governing body of the government implementing agency;
  - (iii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
  - (iv) meets any other criteria prescribed by the Board.

14. (1) The Administrator of the Fund shall by the 30<sup>th</sup> August of each year issue a budget circular for the Fund to the eligible persons indicating—

Application for funding.

- (a) the ceilings for funding under sports, arts and social development;
- (b) priority programmes, projects and activities to be funded in that financial year; and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 13 shall at least six months before the commencement of a financial year apply to the Administrator of the Fund in such a manner as may be prescribed by the Board.

(3) An application for funding under paragraph (2) shall be accompanied by—

- (a) in case of a sports organisation—
  - (i) the certificate of registration issued under the Sports Act, 2013;
  - (ii) the minutes of a properly constituted meeting of the governing body of the organization containing the resolution to apply for funding from the Fund;
  - (iii) an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;

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- (iv) the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
  - (v) a statutory declaration of programmes funded through other sources;
  - (vi) the details and signatories of the bank account in the name of the organization where the funds shall be channeled; and
  - (vii) any other information as may be required by the Board.
- (b) in the case of a professional sportsperson —
- (i) a valid licence issued under the Sports Act, 2013;
  - (ii) proof that he or she has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally;
  - (iii) a statutory declaration of his or her programmes funded through other sources;
  - (iv) a written confirmation from the accounting officer responsible for matters relating to sports that the professional sportsperson has met the criteria set under paragraph (ii); and
  - (v) the details and signatories of the bank account where the funds shall be channeled;
- (c) in the case of a government implementing agency—
- (i) a copy of the legislation establishing the agency;
  - (ii) an annual work programme aligned to the strategic plan of the agency and the medium term plan approved by the governing body of the government implementing body;
  - (iii) the minutes of a properly constituted meeting of the governing body of the government implementing agency containing the resolution to apply for funding from the Fund;
  - (iv) the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;

- (v) a statutory declaration of programmes funded through other sources;
- (vi) the details and signatories of the bank account in the name of the agency where the funds shall be channeled; and
- (vii) any other information as may be required by the Board.

15. (1) The funds under the Fund shall be disbursed under the following conditions—

Fund  
disbursements.

- (a) all disbursements from the Fund shall be approved and recorded in minutes of the Board;
- (b) disbursements from the Fund shall be to support the objects and purpose of this Fund;
- (c) transfers to defray the expenses in respect of the administration of the Fund shall be as approved by the Board for the respective financial year;
- (d) the Board shall set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(2) A recipient shall—

- (a) submit quarterly and annual progress reports of the programmes, projects and activities funded by the Fund; and
- (b) allow staff of the secretariat to monitor and evaluate programmes, projects and activities funded by the Fund.

(3) A recipient shall return any unutilized funds disbursed in accordance with paragraph (1) where—

- (a) the purpose for which the funds were disbursed was not undertaken; or
- (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or
- (c) savings are realized as a result of change in circumstances.

(4) Unutilized funds returned under paragraph (2) shall be recorded as receipts of the Fund.

(5) A recipient who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until full compliance.

16. The Administrator may, with the approval of the Board, invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Public Finance Management Act, 2012.
- Investment of funds.  
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17. 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.
- Retention of receipts.
18. Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.
- Application of Government regulations and procedures.
19. The Administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and in preparing the work plan, projects and quarterly reports and ensure the work plan, projects and quarterly reports-
- Preparation and submission of work plans, etc.
- (a) contain information on the financial and non-financial performance of the Fund; and
- (b) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.
20. The work plans, projects, procurement plans and quarterly reports shall be prepared by the administrator of the Fund before submission to the Board for approval.
- Approval of reports.
21. (1) The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act, 2012 and as may be prescribed from time to time by the Accounting Standards Board.
- Annual reports.
- (2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under paragraph (1).
- (3) The annual financial and non-financial statements under paragraph (1) shall be approved by the Board and submitted to the Auditor General for audit within three months after the end of the financial year in accordance with the Public Audit Act, 2015 and a copy thereof submitted to the Cabinet Secretary responsible finance, Cabinet Secretary responsible for sports and arts and Cabinet Secretary responsible for health.
22. 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, upon 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.
- Offences and penalties.



23. (1) In the event of winding up of the Fund, 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 sports.

Winding-up of the Fund.

(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 the Auditor General for audit with a copy to the National Treasury.

(3) The Auditor General shall after audit, submit the final report to the National Assembly within three months of the receipt of the initial report under paragraph (2).

24. The Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 are revoked.

Revocation of L.N. 174/2018.

Dated the 25th October, 2018.

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