



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY
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NAIROBI

14 APR 2020

REF. No. TNT/CONF 158/01/C/14

6th April, 2020

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI.

ODLSP - for tabling

Docs - for information of the Committee

Dear *Sialai,*

RE: THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020 ^{CMA}
LEGAL NOTICE NO. 38

7/2/20

The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 have been published vide Legal Notice No. 38.

Towards this end, the National Treasury is submitting the following documents in accordance with the Statutory Instruments Act, 2013 to the National Assembly for further necessary action:-

- a. The published Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 Legal Notice No. 38;
- b. A signed Explanatory Memorandum;
- c. The evidence of public participation while developing the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 and the public notice inviting the general public to submit comments; and
- d. A Matrix on all comments/inputs received from the National Assembly's Committee on Delegated Legislation and general public and the rationale for each.

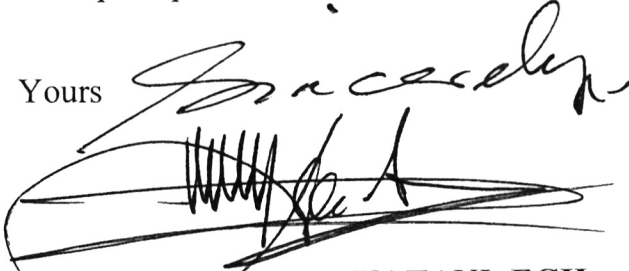
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Office
Ms Registrar and Com to Tabung
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07 APR 2020

The purpose of this letter, therefore, is to submit the above-mentioned documents to the National Assembly for your further necessary action.

Your prompt attention and action on this matter will be highly appreciated.

Yours



HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to: Hon. Paul Kihara Kariuki, CBS, SS
Attorney General
State Law Office & Department of Justice
Sheria House
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Julius Muia, PhD, CBS
Principal Secretary
National Treasury
National Treasury & Planning
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Office of the Attorney General
Sheria House
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SPECIAL ISSUE

Kenya Gazette Supplement No. 31A

525

27th March, 2020

(Legislative Supplement No. 19A)

LEGAL NOTICE NO. 38

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

**THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

Arrangement of Regulations

Clause

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—ESTABLISHMENT OF THE FUND

3—Establishment of the COVID-19 Emergency Response Fund.

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5—Sources of the Fund.

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PART III—MANAGEMENT OF THE FUND

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11—Overdrawn account.

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14—Quarterly Reports.

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16—Presidential Declaration and Lapse of the Fund.

17—Winding up of the Fund.

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THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020

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 Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020	
PART I—PRELIMINARY	
1. These Regulations may be cited as the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.	Citation.
2. In these Regulations, unless the context otherwise requires—	Interpretation.
“Act” means the Public Finance Management Act, 2012	
“Administrator of the Fund” means a person designated as such under Regulation 9 of these Regulations;	
“Board” means the COVID-19 Emergency Response Fund Board established under Regulation 7 of these Regulations;	
“Cabinet Secretary” has the meaning assigned to it under Section 2 of the Act;	
“COVID-19” means an infectious disease caused by coronavirus;	
“essential supplies” includes human medicine, medical equipment, medical consumables, medical protective gear, quarantine facilities, COVID-19 test kits, food, logistics, water, electricity and medical disposal bins;	
“frontline workers” includes immigration officers, customs officers, security officers, community health assistants and volunteers;	
“Fund” means the COVID-19 Emergency Response Fund established under Regulation 3 of these Regulations;	
“voluntary contributions” includes voluntary pay cuts, voluntary salary contributions, subscriptions, donations and gifts; and	
“vulnerable persons” includes persons with special needs such as older persons, pregnant women, orphans, vulnerable child and persons without a clear means of livelihood.	
PART II—ESTABLISHMENT OF THE FUND	
3. There is established a Fund to be known as the COVID-19 Emergency Response Fund.	Establishment of the Fund.
4. (1) The object and purpose of the Fund shall be to mobilize resources for emergency response towards containing the spread,	Object and purpose of the

14 APR 2020

effect and impact of COVID-19 pandemic.	Fund.
(2) Notwithstanding the generality of sub regulation (1) the purpose of the Fund shall include the following—	
(a) to fund the purchase of essential supplies for public hospitals and other related institutions, health professionals and frontline workers, as need arises;	
(b) to fund programmes and initiatives towards cushioning and provision of emergency relief to the most vulnerable, older and poor persons in urban informal settlements;	
(c) to support and stimulate micro, small and medium enterprises rendered vulnerable by COVID-19 pandemic;	
(d) to fund restoration of the facilities being used for compulsory quarantine for safe use by the hosting institutions;	
(e) to enhance the capacity of the relevant research institutions in handling COVID-19 surveillance; and	
(f) to fund any other emerging issue arising from the COVID-19 pandemic.	
5. The Fund shall consist of—	Sources of the Fund.
(a) monies appropriated by National Assembly for purposes of the Fund;	
(b) voluntary contributions from public officers and private persons;	
(c) grants, donations, subscriptions, bequests or other gifts made to the Fund; and	
(d) monies from any other source approved by the Cabinet Secretary.	
6. There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established.	Expenditure of the Fund.
PART III—MANAGEMENT OF THE FUND	
7. (1) There is hereby established a board to be known as COVID-19 Emergency Response Fund Board which shall comprise of—	Board of the Fund.
(a) a Chairperson appointed by the President;	
(b) Cabinet Secretary responsible for matters relating to Interior and Co-ordination of National Government;	
(c) Chairperson of the Council of County Governors; and	
(d) Eight other members, who shall not be public officers, appointed by the President.	
(2) There shall be a Secretary to the Board appointed by the President and whose duties shall be specified in the appointing instrument.	
8. The functions of the Board shall be—	Functions of the

	Board.
(a) to consider and recommend the estimates of revenue to and expenditure from the Fund to the Cabinet Secretary for approval;	
(b) to approve the opening and closing of bank accounts in accordance with the Act;	
(c) to approve disbursements from the Fund;	
(d) to receive, review and approve reports on the performance of the Fund;	
(e) to oversee the monitoring and evaluation of the programmes and activities under the Fund;	
(f) to approve the financial statements of the Fund prepared in accordance with the Act;	
(g) to consult with the Cabinet Secretary on matters relating to the administration of the Fund; and	
(h) to perform any other functions that shall be assigned by the Cabinet Secretary.	
9. (1) The Administrator of the Fund shall be the Principal Secretary for the time being responsible for matters relating to finance.	Administrator of the Fund.
(2) The Administrator of the Fund shall exercise the following functions—	
(a) supervise and control the administration of the Fund;	
(b) prepare estimates of annual revenue and expenditure of the Fund relating to its obligations and operational expenses and submit it to the Board for adoption;	
(c) cause to be established proper systems of control and oversight under the provisions of the Act;	
(d) advise and consult the Board on matters relating to the administration of the Fund;	
(e) prepare non-financial performance reports of the Fund and submit them to the Board for adoption;	
(f) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;	
(g) prepare, sign and transmit to the Auditor-General financial statements in accordance with the Act; and	
(h) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.	
(3) Upon approval by the Board, the Administrator of the Fund shall submit estimates of revenue and expenditure to the Cabinet Secretary for approval.	
(4) The Administrator of the Fund shall designate officers under the National Treasury as the secretariat to the Fund.	
PART IV—FINANCIAL PROVISIONS	

10. (1) The Administrator of the Fund may open bank accounts with the approval of the Board in the name of the Fund with a bank as may be approved by the National Treasury.	Bank accounts for the Fund.
(2) All moneys payable into the Fund shall be received into the bank accounts of the Fund.	
11. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.	Overdrawn accounts.
12. (1) Withdrawals from the Fund shall only be for purposes of promoting the objects and purpose for which the Fund is established.	Withdrawals from the Fund.
(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.	
13. The Fund shall be governed in accordance with the financial and procurement laws and Regulations as applicable.	Financial and procurement Regulations.
14. The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the Act.	Quarterly reports.
15. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.	Accounts of the Fund.
(2) The Administrator of the Fund shall prepare financial statements of the Fund in accordance with the Act.	
PART V—GENERAL PROVISIONS	
16. (1) The President may, in consultation with the Cabinet Secretary responsible for matters relating to health, and by Notice in the Gazette, declare that COVID-19 pandemic is no longer a threat to the social, economic and political stability of the country.	Presidential declaration and lapse of Fund.
(2) Upon such declaration as provided for under paragraph (1), the Fund shall lapse.	
17. Upon the lapsing of the Fund in the manner provided for under regulation 16, the Fund shall be wound up in accordance with the provisions of the Act and Regulations made thereunder.	Winding up of the Fund.

Dated the 27th March, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020

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I. The Purpose of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

1. These Regulations propose to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.
2. The World Health Organization (WHO) on 11th March, 2020 declared COVID-19 a pandemic, pointing to the over 300,000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
3. Subsequently, His Excellency the President of the Republic of Kenya has issued several directives to contain the spread, effect and impact of COVID-19 pandemic in the country. These include:
 - a. Policy measures and behavioural protocols aimed at containing the spread of COVID-19, such as suspension of learning in all educational institutions, social distancing through minimizing congestion in public transport, shopping malls, entertainment joints and social gatherings;
 - b. Self-quarantine or compulsory-quarantine measures taken to ensure the safety of all Kenyans;
 - c. Implementation of strict evaluation and monitoring protocol, designed to proactively seek out and test persons who may be carriers of this virus;
 - d. Implementation of tax reliefs and other measures aimed at increasing disposable income to the people of Kenya, through:
 - i. 100 % Tax Relief for persons earning gross monthly income of up to Ksh. 24,000,
 - ii. Reduction of Income Tax Rate (Pay As - You - Earn) from 30% to 25%,
 - iii. Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;

- iv. Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs); and
 - v. Appropriation of an additional Ksh. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.
- e. In recognition of the extra-ordinary nature of this global tragedy and its enormous local effects, and conscious of the solemn duty of the Government to guarantee the enjoyment of social, civil and economic rights; this Fund will support the implementation of targeted state interventions to cushion every Kenyan from shocks arising from COVID-19.
4. To achieve this purpose, the Regulations in particular:
- a. establish and specify the sources, object and purpose of the Fund;
 - b. provide for management of the Fund, by a Board and an administrator of the Fund;
 - c. provide for a robust governance and accountability framework for the resources received in this Fund;
 - d. provide for the expenditures of the Fund; and
 - e. provide for Presidential Declaration that COVID -19 is no longer a threat to socio-economic and political stability of this great national and consequently trigger the lapsing of the Fund and its subsequent winding up.

II. The Legislative Context:

5. 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. Towards this end, this Fund is proposed to be established under the section.
6. Taking into account the extra-ordinary nature of this global tragedy and its enormous local effects, including the directives on social distancing, the National Treasury has not subjected these Regulations to public consultations, as required under the Statutory Instruments Act, 2013.

III. Policy Background

7. COVID-19 is an infectious disease caused by coronavirus, which is highly contagious and it's mainly spread from person-to-person.
8. On 11th March, 2020, WHO declared COVID-19 a pandemic, pointing to the over 300, 000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
9. Consequently, the Government of Kenya has put in place a raft of policy measures, behavioural protocols and economic reliefs aimed at containing the spread of COVID-19.

IV. Public Consultations

10. The National Treasury published the Regulations both on its website, the Daily Nation and the Standard Newspapers of 31st March, 2020, which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5.00 pm for submission of comments / views and memoranda from stakeholders and the general public. A report from the comments received from the public including the comments from the National Assembly's Committee on Delegated Legislation, on the Regulations and action taken by the National Treasury is attached as an Appendix to this Explanatory Memorandum.

V. Guidance

11. The National Treasury and the Ministries of Interior and Coordination of National Government; Health; Agriculture, Livestock, Fisheries and Co-operatives; Industry and Trade will sensitize stakeholders including Parliament, and the general public, on the provisions of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

VI. Performance Monitoring and Evaluation of the Fund

12. The National Treasury shall monitor the application of the COVID-19 Emergency Response Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, COVID-19 Emergency Response Fund Board shall be responsible for implementing the Fund and will also carry out regular monitoring and

evaluation of the specific programmes, projects and develop policies relating to the general administration and management of the Fund.

VII. National Treasury Contact Person.

13. The contact person at the National Treasury is the Cabinet Secretary, Hon. (Amb) Ukur Yatani, EGH or the Principal Secretary, Julius Muia, PhD, CBS.



UKUR YATANI, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY AND
PLANNING

Date.....7th April, 2020.....



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

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**COMMENTS BY THE COMMITTEE ON DELEGATED LEGISLATION (NA),
COMMISSION ON REVENUE ALLOCATION, KENYA LAW REFORM
COMMISSION AND THE INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS OF KENYA ON THE PUBLIC FINANCE MANAGEMENT
(COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”	<i>Accepted.</i>
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The</p>	<p><i>Accepted with amendments.</i> The definition of essential supplies includes quarantine facilities and the term used is “includes”, which means it foresees other areas which can be covered including isolation centers.</p> <p><i>Accepted.</i> The Definition is the World Health Organization definition, which is common and agreed with the Ministry of Health.</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability(PWDs), widows and widowers.</p>	<p><i>Accepted with amendments.</i> The definition of vulnerable persons includes persons without a clear means of livelihood. The National Treasury understanding is that not all widows and widowers are vulnerable and some of them have clear means of livelihood such as rental income, employment income and business income.</p>
3.	Regulation 4(2)(a)	<p>The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.</p>	<p><i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions.</p> <p>The paragraph also refers to related institutions, hence broad enough to cover private health facilities handling COVID-19 cases.</p>
4.	Regulation 4(2)(b)	<p>Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning...older and poor persons in urban informal</p>	<p><i>Accepted with amendments.</i> All persons without clear means of livelihood including senior citizens and poor persons are catered for. All</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>setting. This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.</p>	<p>informal settlements are catered for both big and small towns, who have been rendered vulnerable by COVID-19 pandemic and have no clear means of livelihood.</p> <p>Para. (f) provides for emerging issues which is broad enough.</p> <p>In addition, the Social Assistance Fund will complement the COVID-19 Emergency Respond Fund Regulations, 2020 to cushion other Kenyans who are also vulnerable.</p>
5.	Regulation 5	<p>Regulation 5 (b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.</p>	<p><i>Accepted.</i> The word “private persons” includes a natural persons or legal persons and therefore this is catered.</p>
6.	Regulation 7	<p>The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.</p>	<p><i>Accepted with amendments.</i> The composition of the Board shall take into account the gender balance. However, the Cabinet Secretary / Health is the Chairperson of the Cabinet Sub-Committee on Health matters, which will be expected to justify the resource requirements of the Health Sector to the Board and therefore including him /</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			her in the Board will lead to a conflict of interest.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.	<i>Accepted.</i> All financial statements will be transmitted to the National Assembly after audit by the Auditor General. This is already provided for in Reg. 13
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the monthly returns to the National Assembly for purposes of accountability.</p>	<p>The quarterly financial and non-financial reports are submitted to the National Treasury, Controller of Budget and Commission on Revenue Allocation in accordance with the provisions of the Public Finance Management Act, 2012 and its Regulations thereof.</p> <p><i>Accepted with amendments.</i> Management reports are ordinarily not regulated such as monthly management reports. However, the National Assembly can request for any report and such report shall be submitted to the National Assembly, within fourteen days.</p> <p>In addition, all revenues received in this Fund shall on monthly basis be gazetted on or by the 21st Day of the succeeding month. This is</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			provided for under Section 46 (2) of the Public Finance Management Act, 2012. This is already provided for in Reg. 13
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.	Accepted. The Public Finance Management Act, 2012 provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly.
COMMENTS / INPUTS FROM KENYA LAW REFORM COMMISSION			
10.	Regulation 2	In the definition of “essential supplies “ to include soap and alcohol based sanitizers and any other item that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more items than what is listed.
11.	Regulation 2	In the definition of “frontline workers” to include airline crew, airport personnel and any other category of workers that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more categories than what is listed.

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
12.	Regulation 2	Clarify the definition of vulnerable persons.	Accepted. In the definition of “ <i>vulnerable persons</i> ”, the key word is “ <i>includes</i> ” meaning the list is not exhaustive and therefore it will include street children and families as long as they have no clear means of livelihood. As suggested above.
13.	Application	Include a paragraph to the effect that the Regulations shall cover prevention and treatment measures in all parts of the Republic	Not accepted. All parts of Kenya include private residencies where citizens have been directed to self-quarantine and therefore litigious Kenyans can later after COVID-19 sue the Government that their costs should have been catered for while under quarantine. Already the quarantined Kenyans have started demanding that the Government should pay on their behalf. The general objective is clear.
14.	Regulation 7 (2)	Amend the Regulation to provide that Secretary will be an <i>Ex-Official Board Member</i>	Not accepted. The Secretary for this Board, will be equivalent to a Corporation Secretary, who will not be an ex-official Member of the Board.
15.	Regulation 14	Amend to include ad-hoc reports as may be required from time to time.	Accepted. The National Assembly or the Board have the powers under the law to request for an ad-hoc report and such report shall be prepared and submitted within fourteen days. Therefore, we

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			do not need to legislate what is already legislated. This is already provided for in Reg. 13.
16.		Provide for powers for the Cabinet Secretary to exempt a tax obligation on a tax payer who make donations to the Fund or provides other services promoting the objective of the Fund.	Not accepted. Subsidiary legislation cannot amend a principal law. This is a subsidiary legislation and there are principal laws dealing with tax exemption matters such as Income Tax, VAT Act, among others and therefore this proposal should be channeled towards the specific law and not a subsidiary legislation.
17.		Consider making a provision for the Board to co-opt experts in the Board.	Not accepted. The Cabinet has set up technical sub-committees which will deal with the technical issues, whereas the Board will deal with the mobilization of resources and allocation of the same based on the submitted technical needs. Towards this end, the experts are required at the technical level and not the Board level.
18.		Consider a provision for reimbursement of Board expenses.	Not Accepted. The Board members are eminent persons who will provide pro-bono services as part of their corporate social responsibility to the nation during COVID-19 pandemic.
19.	Regulation 17	Provide specifically for the winding up process of the Fund.	Accepted with amendments. The Public Finance Management Act, 2012

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			<p>provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly. Reg. 17 is clear on the process.</p>
COMMENTS / INPUTS FROM COMMISSION ON REVENUE ALLOCATION			
20.	Regulation 2	<p>Definition of the word “<i>vulnerable persons</i>” which includes “<i>persons without a clear means of livelihood</i>” is very subjective and needs clarity.</p>	<p>Not accepted. In the definition of “<i>vulnerable persons</i>”, the key word is “includes” meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization.</p>
21.	Regulation 4 (b)	<p>Is specific on provision of emergency relief to poor persons in urban informal settlements to the exclusion of the rural poor who should also be catered for by the Fund.</p>	<p>Not accepted. The rural poor are taken care of by the Social Assistance Fund. In addition, in emergency relief to poor persons in urban informal settlements are made to address the effect of the urban poor who will be rendered non-productive due to COVID-19 Pandemic as a result of lock-down and these</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			will be required to stay indoors for the period of the lock-down.
22.		Board allowances and expenses	<i>Not Accepted.</i> This Board will not receive any Board allowances and their services will be pro-bono as their contribution to the society. This is a corporate social responsibility by the Board.
COMMENTS / INPUTS FROM INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)			
23.	Regulation 2	Definition of “vulnerable persons” leaves out an important group i.e. street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood.	<i>Not accepted.</i> In the definition of “vulnerable persons”, the key word is “includes” meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization including the street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood .
24.	Regulation 4	To include any other duly registered / licensed health facility that is in the view of the Board is offering relief for patients immediately after public hospitals. Amend sub-regulation (b) to include ...women, older members of society, persons with disabilities, children, youth, members of minority or	<i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions. The paragraph also refers to related institutions, hence broad

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		marginalized communities.	enough to cover private health facilities handling COVID-19 cases.
25.	Regulation 5	<p>Expand the sources of monies to the Fund to include:-</p> <p>a. Monies unutilized from unclaimed asset Funds;</p> <p>b. Forfeiture of seized cash and cash equivalents from proceeds of crime including proceeds of drug trafficking and anti-money laundering activities;</p> <p>c. All proceeds recovered from graft and corruption cases;</p> <p>d. Fines and sanctions imposed under the Public Health Act and Environmental Management and Coordination Act.</p>	Not Accepted. The applications of the identified sources of revenues by the Institute are guided by the specific statutes, which have stated where the revenues shall be directed to. For example, the proceeds of Crime and Anti-Money Laundering Act states that all proceeds of crime should be remitted to the Consolidated Fund. Towards this end, a subsidiary legislation cannot amend a principal law to direct the revenues elsewhere.
26.	New Regulation	<p>The new Regulation to state as follows:-</p> <p>“At least 40% from the National Government Contingency Fund and at least 25% from each County Emergency Fund as stipulated under Section 110 of the Public Finance Management Act, 2012 shall be consolidated and re-allocated to COVID-19 Emergency Response Fund.</p>	Not Accepted. The Public Finance Management Act, 2012 has clear provisions on how the Contingency Fund and County Emergency Funds shall be accessed and utilized. Therefore this proposed amendment is not made for posterity and therefore is not supported by the National Treasury. In addition, the a subsidiary legislation cannot amend an Act of Parliament, which directs how the Contingency Fund and County Emergency Fund shall

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			be utilized.
27.	Regulation 6	To add a definition on the “unauthorized expenditure”	<i>Accepted with amendments.</i> The Public Finance Management Act, 2012 which is the principal law, and therefore these Regulations are being made under the Public Finance Management Act, 2012 and therefore the definition will also apply for these Regulations. In addition, this will be a repetition.
28.	Regulation 7 (2)	<p>To add “subject to the general supervision and direction of the Fund Administrator, the Secretary shall be the Chief Executive Officer responsible for the management of the operation of the Fund, management of funds, property and business of the Board; and Fundraising.</p> <p>Proposes to provide for the qualification of the Chairperson and Board members to be a citizen of Kenya, knowledge or experience in disaster management of not less than 15 and 10 years for Chairperson and Members respectively and inclusion of the Cabinet Secretary / Health and an expert in infectious diseases in the Board.</p> <p>Proposes that the Regulations provide for remuneration of the Board members.</p>	<p><i>Not accepted.</i> The roles of the Secretary and the Fund Administrator are totally different and therefore the Secretary should not be subjected to the Administrator.</p> <p><i>Not Accepted.</i> The Board will be supported by competent technical secretariat. This is in addition to the PFM roles including fund-raising.</p> <p><i>Not Accepted.</i> The Board shall not be remunerated and therefore there is no need to provide for the remuneration of Board.</p> <p><i>Accepted.</i> The tenure of the Board shall lapse with the</p>

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		The tenure of the Board to be made clear that the Board will cease to be in place upon the lapse of the Fund, as guided by Regulation 16.	Fund. Therefore this is already provided for in the Regulations.
29.	Regulation	<p>The Institute proposes either of the following options:-</p> <p>a. Expand the mandate of the Secretary to the Board to include responsibilities of the Administrator of the Fund and include designated staff of the National Treasury to support as Secretariat to the Board. In essence, delete Regulation 9 and take those functions to the Secretary.</p> <p>Or</p> <p>b. include the Principal Secretary (Administrator of the Fund) among members of the Board.</p>	<p>Not accepted. The Role of the Administrator of a National Public Fund is a public finance management role, assigned by the Constitution as the Accounting Officer under Article 226 (2) of the Constitution. An Accounting Officer is accountable to the National Assembly for application of public resources. The Role of a Secretary of a Board is administrative and can be assigned to any public officer. A Secretary of a Board is accountable to the Board for proper functioning of the Board.</p> <p>Towards this end, these are distinct roles, which cannot be merged due to their levels of accountability.</p>
30.	Regulation 14.	The Institute proposes that “quarterly reports be published and publicized”	<i>Accepted.</i> The provisions of the Public Finance Management Act, 2012 are very clear that any report prepared under Public Finance Management Act, 2012 which includes quarterly financial and non-financial reports shall be published and publicized. This is provided for under Section 2 of the Public

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			Finance Management Act, 2012. Once reports are published and publicized, they are public documents and any person / institution which requires a copy they can download it from the National Treasury at any time of their choice.
31.	New proposal	The institute proposes an Administration cost of up to 5%	<i>Not Accepted.</i> The Fund shall have no administration costs and therefore all the funds shall be applied towards COVID-19 Pandemic. Each implementing government institution shall apply their own resources allocated by National Assembly to deal with any administration costs. In addition, the Board shall not draw any remuneration.