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SNA
30/7/19




**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT-SECOND SESSION**

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF

- i. The Public Finance Management (Biashara Kenya Fund), Regulations, 2019 (Legal Notice No. 78 of 2019)
- ii. The Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (Legal Notice No.79 of 2019);
- iii. The Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (Legal Notice No. 80 of 2019); and
- iv. The Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (Legal Notice No. 81 of 2019)

JULY 2019

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 30 JUL 2019	DAY: TUESDAY
TABLED BY:	CHAIRPERSON DELEGATED LEGISLATION HON. GLADYS SHOLLEI
CLERK AT THE TABLE:	<i>[Signature]</i>

*Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI.*

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ABBREVIATIONS

AGPO Access to Government Procurement Opportunities

LN Legal Notice

PFM Public Finance Management Act

PWDs Persons Living with Disability

RMA Regulatory Making Authority

SI Statutory Instruments

SME Small and Medium Enterprises

SO Standing Order

CHAIRPERSON'S FOREWORD

On 13th June, 2019, the Cabinet Secretary for the National Treasury and Planning published the following Regulations –

- (a) the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (*LN No. 78 of 2019*);
- (b) the Public Finance Management (Uwezo Fund) (Revocation) Regulations (*LN No. 79 of 2019*),
- (c) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (*LN No. 80 of 2019*); and
- (d) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations (*LN No. 81 of 2019*)

The Regulations cited hereinabove were transmitted to the Clerk of the National Assembly on 27th June, 2019 and tabled before the House on 2nd July, 2019, after which they stood committed to the Committee on Delegated Legislation for scrutiny.

The National Treasury and Planning intends to collapse the existing affirmative action funds namely; Uwezo Fund, Women Enterprise Fund and the Youth Enterprise Development Fund and establish a new Fund to be known as the Biashara Kenya Fund. The justification given for this merger is that the establishment of a new Fund seeks to operationalise Articles 27, 55 (b) (c) and 56 (b)(c) which provide for affirmative action programmes and other resources in respect to disadvantaged groups and youth aimed at ensuring equitable development of the State. The Regulations are also intended to operationalise the Presidential Taskforce on Parastatal Reform Report of 2014 which recommended the merger of the existing affirmative action Funds.

The Committee held a meeting with the regulation making authority and other stakeholders on 17th April, 2019, where pertinent issues were raised concerning the proposed merger.

Pursuant to Section 13 (q) of the Statutory Instruments Act, the Committee was of the opinion –

- (i) that the Ministry ought to consider addressing the challenges facing individual funds, improve their efficiency, resource them adequately and improve on accountability structure instead of the proposed merger by exploring the possibility of borrowing best practices from Funds that have performed well, e.g. the Women Enterprise Fund;
- (ii) that the merger seems speculative and does not provide any tangible strategies to address the challenges facing the current Funds. The merger will also result in the loss of identity for women and youth and likely marginalise persons with disability;
- (iii) that the proposed Regulations ought to address the perceived biases towards women and youth in the society that has presumably marginalised older men in the society;
- (iv) that the proposed Regulations also appear to be punitive to those who have been accessing the Funds in a bid to encourage new beneficiaries;
- (v) that members proposed that members should be involved in identification and support of different target groups since local leaders understand local dynamics;

- (vi) that the remedy for defaulters in the proposed Regulations needs to be well elaborated;
- (vii) that the merger should guard against private entities and intermediaries trading with the monies from the Fund; and
- (viii) that under Regulation 11 and 12, the Executive ought to not interfere with the day-to-day running of the Fund.

At the meeting of 17th April, 2019, it was resolved in the presence of the regulation-making authority (National Treasury) that a further meeting be convened to confirm that the issues raised in Mombasa were indeed addressed. However, contrary to section 16 of the Act, the National Treasury proceeded to publish and submitted to Parliament the Regulations without further consultations with the Committee.

Nevertheless, the Committee scrutinised the published Regulations in accordance with the law and made various observations. One of the key findings of the Committee is that the Regulations contravene section 6, 7, and 8 of the SI Act that requires the regulation-making authority to carry out a Regulatory Impact Assessment and submit it to Parliament if the proposed Regulations has significant cost or impact to the community or a section of the community. The PFM (Biashara Kenya Fund) Regulations, 2019 have a huge impact on the community especially the youth, women, persons with disabilities and small and medium business enterprises. Therefore, the regulation-making authority failed to conduct, gazette and submit a Regulatory Impact Statement with an attendant certificate as required by the Act.

The Committee also observed that the Explanatory Memorandum submitted alongside the Regulations does not comprehensively demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act, hence does not indicate consultation with relevant stakeholders. However, disclosure of their consultations is very brief as it only mentions a number of senior persons in various state organs and bodies and gives a general view of the issues discussed, and has no demonstration of having consulted the youth, women, persons with disabilities, employees of the merging Funds and giving a detailed indication on the issues discussed.

It was further observed that the Biashara Kenya Fund Regulations ought to have been made through a substantive Act of Parliament instead of the PFM Act so as to facilitate the implementation of a legal framework for the management, control, regulation, and operations of a policy matter.

Having satisfied itself that the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 contravene various sections of the Statutory Instruments Act, the Committee then recommended that the House resolves to annul them in entirety for the reasons advanced herein.

The Committee also resolved to recommend to the House, the annulment of the Public Finance Management (Uwezo Fund) (Revocation) Regulations (*LN No. 79 of 2019*), the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (*LN No. 80 of 2019*); and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations (*LN No. 81 of 2019*) as they seek to collapse the three (3) existing affirmative action Funds into Biashara Kenya Fund without proper justification on the need for a merger.

The merger seems speculative and does not provide any tangible strategies to address the challenges facing the current Funds. The merger will also result in the loss of identity for women and youth and likely marginalise PWDs, which defeats the purpose for which the three Funds were established in the first place, i.e., to cater for the vulnerable groups (youth, women and PWDs) who cannot easily access loans through conventional banks and other lending institutions.

The reinstatement of the three existing Funds through the proposed revocation of LNs 79, 80 and 81 will also pave way for wider stakeholder consultations on the merger, including enactment of an Act of Parliament to provide the legal framework for the management, control, regulation, and operations of the new entity.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing the necessary technical support to the Committee.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (LN No. 78 of 2019); the Public Finance Management (Uwezo Fund) (Revocation) Regulations (LN No. 79 of 2019), the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (LN No. 80 of 2019); and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations (LN No. 81 of 2019).**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

The Committee is mandated to consider in respect of any statutory instrument, whether it:

- a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b) infringes on fundamental rights and freedoms of the public;
- c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d) contains imposition of taxation;
- e) directly or indirectly bars the jurisdiction of the court;
- f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g) it involves expenditure from the consolidated fund or other public revenues;
- h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j) appears to have had unjustifiable delay in its publication or laying before Parliament;
- k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m) inappropriately delegates legislative powers;
- n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o) appears for any reason to infringe on the rule of law;
- p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

The Committee comprises the following Members –

1. **Hon. Gladys Boss Shollei CBS MP (Chairperson)** - *Uasin Gishu County Woman Representative County, Jubilee Party;*
2. **Hon. Fatuma Gedi, MP (Vice- Chairperson)** - *Wajir County Woman Representative, Party for Development and Reforms;*
3. Hon. Isaac Waihenya Ndirangu, MP- *Roysambu Constituency, Jubilee Party;*
4. Hon. Alice Wahome, MP, *Kandara Constituency, Jubilee Party;*
5. Hon. Robert Mbui, MP, *Kathiani Constituency, Wiper Democratic Movement -Kenya;*
6. Hon. Daniel Maanzo, MP -*Makueni Constituency, Wiper Democratic Movement -Kenya;*
7. Hon. Muriuki Njagagua, MP - *Mbeere North Constituency, Jubilee Party;*
8. Hon. Timothy Wanyonyi, MP - *Westlands Constituency, Orange Democratic Movement;*
9. Hon. Alfred W. Sambu, MP - *Webuye East, Amani National Congress;*
10. Hon. Ronald Tonui, MP - *Bomet Central Constituency, Jubilee Party;*
11. Hon. William Kamoti, MP - *Rabai Constituency, Orange Democratic Movement;*
12. Hon. Martha Wangari, MP -*Gilgil Constituency, Jubilee Party;*
13. Hon. Gideon Mulyungi, MP - *Mwingi Constituency, Wiper Democratic Movement - Kenya;*
14. Hon. William Kamket Kassait, MP - *Tiaty Constituency, KANU;*
15. Hon. (Dr.) Wilberforce Oundo, MP - *Funyula Constituency, Orange Democratic Movement;*
16. Hon. Abdi Koropu Tepo, MP - *Isiolo South Constituency, Kenya Patriots Party;*
17. Hon. George Gitonga Murugara, MP - *Tharaka Constituency, Jubilee Party;*
18. Hon. Jennifer Shamalla, MP – *Nominated, Jubilee Party;*
19. Hon. Munene Wambugu, MP - *Kirinyaga Central Constituency, Jubilee Party;*
20. Hon. Muturi Kigano, MP - *Kangemi Constituency, Jubilee Party;*
21. Hon. Patrick Kariuki Mariru, MP - *Laikipia West Constituency, Jubilee Party;*
22. Hon. Sammy Seroney, MP – *Nominated, Wiper Democratic Movement Kenya;*
23. Hon. Tindi Mwale, MP - *Butere Constituency, Amani National Congress*

1.3 Committee Secretariat

The secretariat comprises of the following members of staff –

- | | |
|--------------------------|---|
| 1. Ms. Susan Maritim | Senior Clerk Assistant (<i>Team Leader</i>) |
| 2. Mr. Jimale Mohamed | Second Clerk Assistant |
| 3. Mr. Wilson Dima Dima | Principal Legal Counsel |
| 4. Mr. Josphat Motonu | Fiscal Analyst |
| 5. Ms. Anne Njeri Kigoro | Research and Policy Analyst |
| 6. Mr. Anthony Wamae | Serjeant at Arms |
| 7. Mr. Charles Ayari | Audio Technician |
| 8. Ms. Mary Otieno | Office Superintendent |

2.0 CONSIDERATION OF THE INSTRUMENTS

2.1 Public Finance Management (Biashara Kenya Fund) Regulations, 2019

2.1.1 Introduction

1. In exercise of the powers conferred by **section 24(4) of the Public Finance Management Act, (No. 18 of 2012)**, the Cabinet Secretary for the National Treasury and Planning published the **Public Finance Management (Biashara Kenya Fund) Regulations, 2019**¹ on 13th June, 2019 vide LN No.78 of 2019. The Regulations were submitted for scrutiny on 27th June 2019 and subsequently tabled before the House on 2nd of July, 2019.
2. The Regulations are intended to operationalise Articles 27, 55 (b) (c) and 56 (b)(c) which provide for affirmative action programmes and other resources in respect to disadvantaged groups and youth aimed at ensuring equitable development of the State.
3. The Regulations are also intended to operationalise the Presidential Taskforce on Parastatal Reform Report of 2014 which recommended the merger of the existing affirmative action Funds.

2.1.2 Purpose of the Regulations

4. The purpose of the Regulations is to provide a one-stop shop for target groups looking for business loans from government, to improve effectiveness and to eliminate overlaps. The Regulations establish a Biashara Kenya Fund whose mandate is to provide affordable financing, business support services, affordable commercial infrastructure and market linkages to enterprises owned by youth, women, people living with disabilities and micro, small and medium enterprises (SMEs).
5. The Fund's intervention in supporting SME's is expected to achieve the following outcomes:
 - a) improved household income of the targeted groups;
 - b) expanded access to affordable credit;
 - c) increased capacity building and skills development;
 - d) formalized and mature SMEs in retail trade;
 - e) strengthened SMEs industry;
 - f) improved ICT infrastructure, facilities and services;
 - g) expanded market linkage, and
 - h) increased uptake of Access to Government Procurement Opportunities (AGPO).
6. To achieve this purpose, the Regulations in particular:
 - a) specify the sources, expenditure, capital, object and purpose of the Fund;
 - b) provide guidance on the administration and management of the Fund;
 - c) establish the Biashara Kenya Fund Board to oversee the Fund and advise the Cabinet Secretary on the proper and effective performance of the Fund;
 - d) provide for the withdrawals from the Fund,

¹ Annexure 1 - Public Finance Management (Biashara Kenya Fund), Regulations, 2019

- e) specify the loan eligibility criteria, application procedures, conditions for disbursement, interest and loan repayments
 - f) provide for investment of the Fund
 - g) provide for retention of receipt and earnings of the Fund
 - h) provides for offences and penalties
 - i) provide for the winding up of the Fund.
7. To achieve its objective, the establishment of Biashara Kenya through the proposed Regulations seek to revoke the following affirmative action Funds –
- (i) *the Uwezo Fund established under Legal Notice No. 21 of 21st February, 2014;*
 - (ii) *the Youth Enterprise Development Fund established under Legal Notice 167 of 8th December, 2006; and*
 - (iii) *the Women Enterprise Fund established under Legal Notice No. 147 of 3rd August, 2007.*

2.1.3 Summary of the Regulations

8. **Regulation 3** provides for establishment of Biashara Kenya Fund.
9. **Regulation 4** provides the various sources of funds for the fund which include monies appropriated by Parliament, income generated from the proceeds of the funds, investments by the fund, donations, gifts and grants.
10. **Regulation 6** provides for an initial capital of Kshs 2 billion appropriated by Parliament in 2019/20 financial year.
11. **Regulation 7** provides for object and purpose of the Fund.
12. **Regulation 8** provides for the management of the Fund where a Biashara Kenya Fund Oversight Advisory Board whose functions are enumerated under **Regulation 10**. In terms of administration of the Fund, the Regulations (**Regulation 11**) gives this responsibility to the Principal Secretary in charge of Gender or any other person designated by the Cabinet Secretary, National Treasury.
13. The Regulations also provide for the CEO of the Fund as well as a Secretariat to support the day to day affairs of the Fund. The CEO and the Secretariat are to be appointed competitively in consultation with the Public Service Commission.
14. **Regulations 13 and 14** provide for the funding eligibility criteria for targeted groups and the required documentations for the processing of the applications for funding respectively. **Regulation 14 (3)** enumerates the various conditions to be met before the disbursement of funds from the fund.
15. **Regulation 26** provides for the various offences and penalties whereas **Regulation 27** makes provisions for winding of the Fund.

2.1.4 Scrutiny of the Instrument

16. In considering the Regulations, the Committee made reference to pre-publication consultations held with the regulation making authority (National Treasury) on Wednesday, 17th April, 2018² at Travellers Beach Hotel, Mombasa where Members met the Chief Administrative Secretary in Ministry of Public Service, Youth and Gender, Hon. Rachel Shebesh and officials from the National Treasury led by the Senior Deputy Director (Accountant-General) Mr. Geoffrey Malombe.
17. The Committee, at its sitting on 4th July, 2019³ considered the Regulations in conformity with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

Issues raised by Members in the previous meeting in Mombasa held on 17th April, 2019

- (i) That the Ministry ought to consider addressing the challenges facing individual funds, improve their efficiency, resource them adequately and improve on accountability structure instead of the proposed merger by exploring the possibility of borrowing best practices from Funds that have performed well, e.g. the Women Enterprise Fund;
- (ii) That the merger seems speculative and does not provide any tangible strategies to address the challenges facing the current Funds. The merger will also result in the loss of identity for women and youth and likely marginalise persons with disability;
- (iii) That the proposed Regulations ought to address the perceived biases towards women and youth in the society that has presumably marginalised older men in the society;
- (iv) That the proposed Regulations also appear to be punitive to those who have been accessing the Funds in a bid to encourage new beneficiaries;
- (v) That members proposed that members should be involved in identification and support of different target groups since local leaders understand local dynamics;
- (vi) That the remedy for defaulters in the proposed Regulations needs to be well elaborated;
- (vii) That the merger should guard against private entities and intermediaries trading with the monies from the Fund; and
- (viii) That under Regulation 11 and 12, the Executive ought to not interfere with the day-to-day running of the Fund.

² Annexure 2 - Committee Minutes of the meeting held on 17th April, 2019

³ Annexure 3- Committee Minutes of the meeting held on 4th July, 2019

2.2 The PFM (Uwezo Fund) (Revocation) Regulations, 2019, PFM (Women Enterprise Fund) (Revocation) Regulations, 2019 and the PFM (Youth Enterprise Development Fund) (Revocation) Regulations, 2019

2.2.1 Introduction

18. In exercise of the powers conferred by **section 24(8) of the Public Finance Management Act, (No. 18 of 2012)**, the Cabinet Secretary for the National Treasury and Planning published the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (*LN No. 79 of 2019*); the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (*LN No. 80 of 2019*); and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (*LN No. 81 of 2019*) on 13th June, 2019. The Regulations were submitted for scrutiny on 27th June, 2019 and subsequently tabled before the House on 2nd of July, 2019.⁴

2.2.2 Purpose of the Regulations

19. The Regulations seek to wind up the three existing Funds, transfer of outstanding amounts, transition of staff and revocation of Legal Notice No. 21 of 2014 that established the Government Financial Management (Uwezo Fund) Regulations, 2014; Legal Notice No. 147 of 2007 that established the Women Enterprise Fund and Legal Notice No. 167 of 2006 that established the Youth Enterprise Development Fund.

2.2.3 Scrutiny of the Instruments

20. The Committee, at its sitting on 4th July, 2019 considered the Regulations in conformity with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.
21. In considering the Regulations, the Committee made reference to pre-publication consultations held with the regulation making authority (National Treasury) on Wednesday, 17th April, 2018 at Travellers Beach Hotel, Mombasa.
22. The revocation Regulations of the three existing Funds, stipulates that employees of the Funds shall be required to apply for employment in the Biashara Fund and shall be subjected to vetting. This is against the values, principles and general spirit of the Constitution. Subjecting employees to vetting occasioned only by a new set of Regulations coming into force and the possibility of losing employment may be contrary to the spirit of the Constitution with regards to Articles 41 (1) on the right to Fair Labour Practices and Article 28 on the Right to Human Dignity.

⁴ Annexure 4 – Legal Notices No. 79, 80 and 81

3.0 COMMITTEE OBSERVATIONS AND FINDINGS⁵

23. Following comprehensive scrutiny of the Regulations, the Committee made the following findings: – THAT

1) Consultation / Public participation – Section 5 of the SI Act

The Regulations contravene Articles 10 and 118 of the Constitution, sections 5, 5A, 13(a) and (m) of the Statutory Instruments Act which require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

The annexed Explanatory Memoranda to the Regulations indicates consultation with relevant stakeholders. However, disclosure of their consultations is very brief as it only mentioned a number of senior persons in various state organs and bodies and gives a general view of the issues discussed. The Explanatory Memorandum had no demonstrated consultation with the youth, women, persons with disabilities, employees of the merging Funds and giving a detailed indication on the issues discussed.

2) Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

Sections 6, 7, and 8 of the Act requires the regulatory-making authority to carry out a regulatory impact assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community. The Biashara Fund Regulations have a huge impact on the community especially the youth, women, persons with disabilities and small and medium business enterprises. Therefore, the regulatory making authority failed to conduct, gazette and submit a Regulatory Impact Statement with an attendant certificate as required by the Act.

3) Statutory Timelines – Section 11 of the SI Act

The Public Finance Management (Biashara Kenya Fund) Regulations, 2019 were published on 13th June, 2019 vide LN No.78 of 2019 and tabled before the House on 2nd of July, 2019 being within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (No 23 of 2013).

4) Penalties – section 13 (a) of the SI Act

Section 24(5) of the Public Finance Management Act limits the penalties that may be annexed to a statutory instrument to six months imprisonment or a fine not exceeding twenty thousand shillings, or both. While the Committee may, pursuant to section 13(q) of the Act entertain higher fines where it is provided for in the parent Act, Regulation 26 of the Biashara Fund Regulations is inconsistent with section 199 of the PFM Act, Regulation 26 provides that *“A person who misappropriates any funds or assets of the Fund.....upon conviction shall be liable to imprisonment for a term of not less than five years....”* whereas section 199 of the Public Finance Management Act provides that *“a person who is found guilty of committing an offence under the Act for which no other punishment is given, is*

⁵Annexure 5 - Committee Minutes of meetings held on 2nd May, 2019; 4th July, 2019; 23rd July, 2019

liable on conviction to a term of imprisonment not exceeding five years” this **contravenes section 13(a) of the Statutory Instruments Act which requires Regulations to be in conformity with the parent Act.**

5) Rights, liberties or obligations unduly dependent upon non-reviewable decisions (Section 13(k) of SI Act)

The revocation Regulations of the three existing Funds, stipulate that employees of the Funds shall be required to apply for employment in the Biashara Fund and shall be subjected to vetting. This is against the values, principles and general spirit of the Constitution. Subjecting employees to vetting occasioned only by a new set of Regulations coming into force and the possibility of losing employment may be contrary to the spirit of the Constitution with regards to Articles 41 (1) on the right to Fair Labour Practices and Article 28 on the Right to Human Dignity.

6) Inappropriate delegation of legislative powers – Section 13 (m) of the SI Act

Regulation 10(k) requires the **Advisory Board to prescribe other guidelines for use by the Fund.** Guidelines are statutory instruments within the meaning of section 2 of the Act. This is therefore contrary to section 13(m) of the Act which requires the Committee in carrying out its scrutiny to consider whether the Regulations inappropriately delegates legislative powers.

7) Conferring with the Regulation Making Authority – Section 16 of the SI Act

Section 16 of the Act requires the Committee, **in so far as it is practically possible** to confer with the regulation-making authority *...for their information and modification where necessary*. The Committee therefore met the regulation-making authority on the 17th April, 2019 in Mombasa and raised pertinent issues in respect to the draft Regulations and resolved in the presence of the regulation-making authority (National Treasury) to have a further meeting *for their information and modification where necessary*. However, contrary to section 16 of the Act, Treasury went ahead to publish the Regulations and submit them to Parliament without addressing the issues raised in the previous meeting held in Mombasa, hence ignoring the input of the Committee on the proposed Regulations.

8) Anyother reason that the Committee considers fit toexamine – Section 13 (q) of SI Act

- (i) The Regulations were made pursuant to Section 24 (4) of the Public Finance Management Act 2012 instead of a substantive Act of Parliament, to provide the legal framework for the management, control, regulation, and operations of the new entity.

The Committee takes cognizance that there is a Bill entitled, the Kenya Uwezo Fund Bill, 2019 (National Assembly Bill No. 42) currently before the National Assembly which seeks to consolidate the Public Finance Management(Uwezo Fund)Regulations, the Government Financial Management(Women Enterprise Fund)Regulations and the Public Financial Management(Youth Enterprise Development Fund) and Public Finance Management (National Government Affirmative Action Fund) Regulations, 2016.

(ii) The proposed PFM (Biashara Kenya Fund), Regulations, 2019 subjects the employees of the existing three Funds to vetting before transitioning to the new Fund, contrary to the spirit of the Constitution with regards to Articles 41 (1) on the right to Fair Labour Practices and Article 28 on the Right to Human Dignity. The Regulations, therefore do not provide sufficient transitional provisions for the employees of the existing Funds.

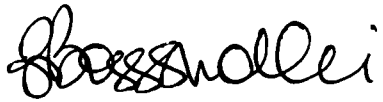
Further, on transition, the Committee observed that the PFM (Biashara Kenya Fund) Regulations, 2019 do not provide for the transitional provisions in relation to assets and liabilities of the three Funds. The only provision is on transfer of cash balances to the Exchequer for crediting to the National Government.

(iii) That the collapsing of the three (3) existing affirmative action Funds into Biashara Kenya Fund defeats the purpose for which the three Funds were established in the first place, i.e., to cater for the vulnerable groups (youth, women and PWDs) who may not easily access loans through conventional banks and other lending institutions.

(iv) The Committee was also concerned about the initial capital of Kshs two billion appropriated by Parliament in the 2019/20 financial year to the proposed Biashara Kenya Fund without an existing legal framework.

4.0 COMMITTEE RECOMMENDATION⁶

24. Pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, and having scrutinised the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (LN No. 78 of 2019); the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (LN No. 79 of 2019); the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (LN No. 80 of 2019); and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (LN No. 81 of 2019) against the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2), the Committee **recommends that the House annuls in entirety the said statutory instruments for the aforementioned reasons.**

Signed.......... Date..... 25th July 2019

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

⁶ Annexure 6 – Committee Minutes of the meeting held on 25th July, 2019

ANNEXURES

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Report on the Adoption of the Report on the Public Finance Management (Biashara Kenya Fund), Regulations, 2019 (Legal Notice No. 78 of 2019)

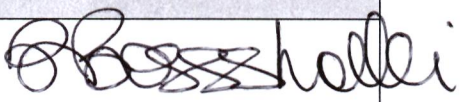


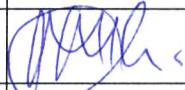
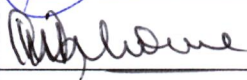
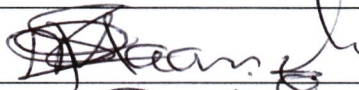
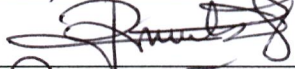
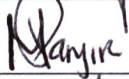
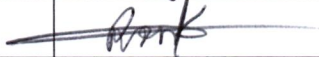
The Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (Legal Notice No.79 of 2019)

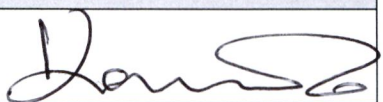

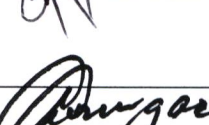


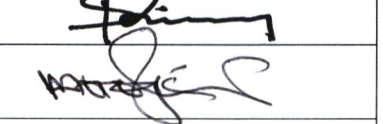




The Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (Legal Notice No. 80 of 2019); and

The Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (Legal Notice No. 81 of 2019)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 25th JULY, 2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss Shollei, CBS, MP (Chairperson)	
2.	Hon. Fatuma Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Alfred Wekesa Sambu, MP	
5.	Hon. Muriuki Njagagua, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Gideon Mulyungi, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Robert Mbui, MP	
10.	Hon. Martha Wangari, MP	
11.	Hon. Ronald Kiprotich Tonui, MP	
12.	Hon. Timothy Wanyonyi, MP	

	HON. MEMBER	SIGNATURE
13.	Hon. William Kamoti, MP	
14.	Hon. Patrick Kariuki Mariru, MP	
15.	Hon. (Dr.) Wilberforce Oundo, MP	
16.	Hon. Abdi Tepo, MP	
17.	Hon. George Gitonga Murugara, MP	
18.	Hon. Jennifer Shamalla, MP	
19.	Hon. Munene Wambugu, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. William Kamket Kassait, MP	
23.	Hon. Tindi Mwale, MP	

MINUTES OF THE 31ST SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 25TH JULY, 2019 AT 11.30 A.M. IN COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. **The Hon. Fatuma Gedi, MP** - **Vice Chairperson**
3. The Hon. Kamoti Mwamkale, MP
4. The Hon. George Murugara, MP
5. The Hon. Munene Wambugu, MP
6. The Hon. Ronald Tonui, MP
7. The Hon. (Dr.) Wilberforce Oundo, MP
8. The Hon. Jennifer Shamalla, MP
9. The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

1. The Hon. Waihenya Ndirangu, MP
2. The Hon. Muriuki Njagagua, MP
3. The Hon. Daniel Maanzo, MP
4. The Hon. Martha Wangari, MP
5. The Hon. Muturi Kigano, MP
6. The Hon. Kassait Kamket, MP
7. The Hon. Alice Wahome, MP
8. The Hon. Robert Mbui, MP
9. The Hon. Patrick Mariru, MP
10. The Hon. Timothy Wanyonyi, MP
11. The Hon. Gideon Mulyungi, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP
3. The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Mr. Charles Ayari - Audio Technician
5. Ms. Mary Otieno - Office Superintendent
6. Mr. Brian Wechabe - Legal Intern

MIN.NO. /NA/CDL/2019/158 PRAYER AND RELIMINARIES

The meeting commenced at 11.55 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/159 ADOPTION OF THE AGENDA

The agenda was unanimously adopted as presented.

MIN.NO. /NA/CDL/2019/160 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 30th sitting held on 23rd July, 2019 were proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon. Sammy Seroney, MP.

MIN.NO. /NA/CDL/2019/161 MATTERS ARISING

Under MIN.NO. /NA/CDL/2019/148, on adoption of the Report on the Value Added Tax Regulations, 2017 (Legal Notice No. 54 of 2017), the Committee resolved to invite the National Treasury and Planning to a meeting on 8th August, 2019 to respond to the matter of gazettelement of the Regulations and public participation.

The National Treasury and Planning is also yet to confirm availability for the retreat scheduled from 9th to 11th August, 2019 in Eldoret.

MIN.NO. /NA/CDL/2019/162 ADOPTION OF THE REPORT ON THE CONSIDERATION OF LEGAL NOTICES 78 TO 81 OF 2019 RELATING TO BIASHARA KENYA FUND REGULATIONS, 2019

The Committee Members unanimously adopted the Report on the Consideration of Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (*LN No. 78 of 2019*); the Public Finance Management (Uwezo Fund) (Revocation) Regulations (*LN No. 79 of 2019*), the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (*LN No. 80 of 2019*) and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations (*LN No. 81 of 2019*). The adoption was proposed and seconded by Hon. Fatuma Gedi, M.P and Hon. Kamoti Mwamkale, MP, respectively.


The Report to be tabled on Tuesday, 30th July, 2019.

MIN.NO. /NA/CDL/2019/163 ANY OTHER BUSINESS

Members were requested to confirm their availability for the retreat scheduled for 28th to 29th July, 2019 at the Hilton Garden Inn, Machakos County. Check-in at the hotel is Sunday 28th July and check-out on Tuesday 30th July, 2019.

MIN.NO. /NA/CDL/2019/164 ADJOURNMENT

There being no other business, the meeting was adjourned at 1.05 p.m.

Signed: 

Date: 29th July, 2019

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**

MINUTES OF THE 29TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 4TH JULY, 2019 AT 11.30 A.M. IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. **The Hon. Fatuma Gedi, MP** - **Vice Chairperson**
3. The Hon. Alice Wahome, MP
4. The Hon. Martha Wangari, MP
5. The Hon. Kamoti Mwamkale, MP
6. The Hon. Patrick Mariru, MP
7. The Hon. (Dr.) Wilberforce Oundo, MP
8. The Hon. Jennifer Shamalla, MP
9. The Hon. Muturi Kigano, MP
10. The Hon. George Murugara, MP
11. The Hon. Munene Wambugu, MP
12. The Hon. Kassait Kamket, MP

ABSENT WITH APOLOGY

1. The Hon. Robert Mbui, MP
2. The Hon. Waihenya Ndirangu, MP
3. The Hon. Timothy Wanyonyi, MP
4. The Hon. Ronald Tonui, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Daniel Maanzo, MP
7. The Hon. Gideon Mulyungi, MP
8. The Hon. Sammy Seroney, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP
3. The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Third Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Mr. Josphat Motonu - Fiscal Analyst
5. Mr. Eric Kanyi - Fiscal Analyst
6. Mr. Anthony Wamae - Serjeant at Arms
7. Mr. Charles Ayari - Audio Technician
8. Ms. Mary Otieno - Office Superintendent
9. Mr. Brian Wechabe - Legal Intern

MIN.NO. /NA/CDL/2019/143 PRAYER AND RELIMINARIES

The meeting commenced at 11.35 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/144 ADOPTION OF THE AGENDA

The agenda was adopted as presented, having been proposed by Hon. Munene Wambugu, MP and seconded by Hon. Martha Wangari, MP.

MIN.NO. /NA/CDL/2019/145 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 28th sitting held on 2nd July, 2019 were proposed by Hon. George Murugara, MP and seconded by Hon. Martha Wangari, MP.

MIN.NO. /NA/CDL/2019/146 MATTERS ARISING

- i. Under MIN.NO. /NA/CDL/2019/139**, on Biashara Kenya Fund Regulations, the Chairperson reported that the Regulations would be considered as substantive agenda of the day, having been tabled on Tuesday, 2nd July, 2019 and committed to the Committee for consideration.
- ii. Under MIN.NO. /NA/CDL/2019/140**, the **Committee** resolved to reschedule the retreat with the Law Society of Kenya to **Friday 26th July, 2019 in Nairobi.**

MIN.NO. /NA/CDL/2019/147 CONSIDERATION OF LEGAL NOTICES 78 TO 81 RELATING TO BIASHARA KENYA FUND REGULATIONS

The Committee was informed that the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 were published on 13th June, 2019 vide LN No.78 of 2019. The Regulations were submitted for scrutiny on 27th June 2019 and subsequently tabled before the House on 2nd of July, 2019 which, was within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Committee noted that the Regulations seek to collapse the provisions of the Government Finance Management (Uwezo Fund) Regulations LN No. 147 of 2012, the Government Finance Management (Youth Enterprise Development Fund) Regulations, LN No. 167 of 2012 and the Executive Order LN No. 63 of 2007 and the Public Finance Management (Women Enterprise Fund) Regulations, LN No. 21 of 2012.

The Cabinet Secretary, National Treasury had, as such, submitted for tabling in the House –

- (a) the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 - LN No.79 of 2019,
- (b) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 - LN No. 80 of 2019; and
- (c) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 - LN No. 81 of 2019.

The Committee further noted that it had held previous meetings with the regulation making authority in respect to the Regulations, more particularly on Wednesday, 17th April, 2018 at Travellers Beach Hotel, Mombasa where Members met the Chief Administrative Secretary in

Ministry of Public Service, Youth and Gender, Hon. Rachel Shebesh and officials from the National Treasury led by the Senior Deputy Director (Accountant-General) Mr. Geoffrey Malombe.

Issues raised by Members in the previous meeting in Mombasa held on 17th April, 2019

- (i) The Ministry should consider addressing the challenges facing individual funds, improve their efficiency, resource them adequately and improve on accountability structure instead of the proposed merger by exploring the possibility of borrowing best practices from Funds that have performed well, e.g. the Women Enterprise Development Fund.
- (ii) The merger seems speculative and does not provide any tangible strategies to address the challenges facing the current Funds. The merger will also result in the loss of identity for women and youth and likely marginalise PWDs;
- (iii) The proposed Regulations should address the perceived biases towards women and youth in the society that has presumably marginalised older men in the society;
- (iv) The proposed Regulations also appear to be punitive to those who have been accessing the Funds in a bid to encourage new beneficiaries;
- (v) Members proposed that MPs should be involved in identification and support of different target groups since local leaders understand local dynamics.
- (vi) The remedy for defaulters in the proposed Regulations needs to be well elaborated.
- (vii) The merger should guard against private entities and intermediaries trading with the monies from the Fund;
- (viii) Under Reg. 11 and Reg. 12, the Government should not micro-manage the day-to-day running of the Fund.

Committee Observation

Having examined the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 LN.No. 78 of 2019, the Public Finance Management (Uwezo Fund)(Revocation)Regulations, LN No.79 of 2019, the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, LN No. 80 of 2019, and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, LN No. 81 of 2019 against the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Finance Management Act(No. 18 of 2012) and the Statutory Instruments Act (No 23 of 2013), the Committee further observed that –

(a) Statutory Timelines

The Public Finance Management (Biashara Kenya Fund) Regulations, 2019 were published on 13th June, 2019 vide LN No.78 of 2019 and tabled before the House on 2nd of July, 2019 being within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (No 23 of 2013).

(b) Conferring with the Regulation Making Authority

That section 16 of the Act requires the Committee, **in so far as it is practically possible** to confer with the regulation-making authority **...for their information and modification where necessary**. The Committee therefore met the regulation-making authority on the 17th of April,

2019 in Mombasa and raised pertinent issues in respect to the draft regulations and resolved in the presence of the regulation-making authority (National Treasury) to have a further meeting *for their information and modification where necessary*. Contrary to section 16 of the Act, Treasury proceeded to publish the Regulations and submitted to Parliament without further consultations with the Committee.

(c) Consultation / Public participation

The Regulations contravene Articles 10 and 118 of the Constitution, sections 5, 5A, 13(a) and (m) of the Statutory Instruments Act which require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

The annexed Explanatory Memoranda to the Regulations does address and indicate consultation with relevant stakeholders. However, disclosure of their consultations is very brief as it only mentioned a number of senior persons in various state organs and bodies and gives a general view of the issues discussed. The Explanatory Memorandum had no demonstrated consultation with the youth, women, persons with disabilities, employees of the merging Funds and giving a detailed indication on the issues discussed.

(d) Regulatory Impact Statement

Sections 6, 7, and 8 of the Act requires the regulatory-making authority to carry out a regulatory impact assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community. The Biashara Fund Regulations have a huge impact on the community especially the youth, women, persons with disabilities and small and medium business enterprises. Therefore, the regulatory making authority failed to conduct, gazette and submit a Regulatory Impact Statement with an attendant certificate as required by the Act.

(e) Penalties

Section 24(5) of the Act limits the penalties that may be annexed to a Statutory instrument to six months imprisonment or a fine not exceeding twenty thousand shillings, or both. While the Committee may, pursuant to section 13(q) of the Act entertain higher fines where it is provided for in the parent Act, Regulation 26 of the Biashara Fund Regulations is inconsistent with section 199 of the PFM Act, Regulation 26 provides that *“A person who misappropriates any funds or assets of the Fund... ..upon conviction shall be liable to imprisonment for a term of not less than five years....”* whereas section 199 of the PFM Act provides that *“a person who is found guilty of committing an offence under the Act for which no other punishment is given, is liable on conviction to a term of imprisonment not exceeding five years”* this contravenes section 13(a) of the Statutory Instruments Act which requires Regulations to be in conformity with the parent Act.

(f) Inappropriate delegation of legislative powers

Regulation 10(k) requires the **Advisory Board to prescribe other guidelines for use by the Fund**. Guidelines are statutory instruments within the meaning of section 2 of the Act. This is therefore contrary to section 13(m) of the Act which requires the Committee in carrying out its scrutiny *to consider whether the Regulations inappropriately delegates legislative powers*.

**(g) Rights, liberties or obligations unduly dependent upon non-reviewable decisions
(Section 13(k) of SI Act)**

The revocation Regulations of the three existing Funds, stipulate that employees of the Funds shall be required to apply for employment in the Biashara Fund and shall be subjected to vetting. This is against the values, principles and general spirit of the Constitution. Subjecting employees to vetting occasioned only by a new set of Regulations coming into force and the possibility of losing employment may be contrary to the spirit of the Constitution with regards to Articles 41 (1) on the right to Fair Labour Practices and Article 28 on the Right to Human Dignity.

The Committee further observed the following: -

THAT –

1. the Ministry did not address issues raised in the previous meeting held in Mombasa hence ignored the input of the Committee on the proposed Regulations;
2. the Committee was not convinced of the proposed merger of the three Funds as proposed;
3. the Regulations were made pursuant to Section 24 (4) of the Public Finance Management Act 2012 and ought to have been made through an Act of Parliament, to provide the legal framework for the management, control, regulation, and operations of a policy matter.
4. the creation of the PFM (Biashara Kenya Fund) Regulations, 2019 fails to provide for the transitional provisions in relation to assets and liabilities of the three Funds. The only provision is on transfer of cash balances to the Exchequer for crediting to the National Government.
5. Members proposed that the Committee should consider introducing a Bill relating to Biashara Kenya Fund to amalgamate the three existing Funds (Uwezo Fund, Youth Fund and Women Enterprise Fund).
6. The Committee was concerned about the initial capital of Kshs 2 billion appropriated by Parliament in 2019/20 financial year in the proposed PFM (Biashara Kenya Fund) Regulations, 2019 without proper legal framework.

Committee Resolution

Having examined the Regulations against the Constitution, Public Finance Management Act, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Statutory Instruments Act (No 23 of 2013) the Committee **resolved to annul in entirety** the following statutory instruments –

- i. the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (*LN No.78 of 2019*);
- ii. the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (*LN No.79 of 2019*);

- iii. the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (LN No. 80 of 2019); and
- iv. the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (LN No. 81 of 2019)

This decision was proposed by Hon. Alice Wahome, MP and seconded by Hon. Patrick Mariru, MP.


The Report on the annulment to be considered when the House resumes from the short recess.

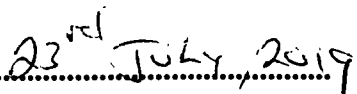
MIN.NO. /NA/CDL/2019/148 ANY OTHER BUSINESS

1. **VAT Regulations, 2017:** The Committee also resolved to consider the Report on the annulment of the Value Added Tax Regulations, 2017 on 23rd July, 2019.
2. **Draft Public Procurement and Asset Disposal (Regulations), 2019 and Drone Regulations** to be considered from 27th to 29th July, 2019 at the same venue with the LSK retreat.

MIN.NO. /NA/CDL/2019/149 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.50 p.m. until 23rd July, 2019 at 11.30 a.m.

Signed: 

Date: 

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**

MINUTES OF THE 22ND SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 2ND MAY, 2019 AT 11.30 A.M. IN THE COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Fatuma Gedi, MP** - **Vice Chairperson**
2. The Hon. Ronald Tonui, MP
3. The Hon. Patrick Mariru, MP
4. The Hon. Robert Mbui, MP
5. The Hon. Waihenya Ndirangu, MP
6. The Hon. Daniel Maanzo, MP
7. The Hon. Kamket Kassait, MP
8. The Hon. Gideon Mulyungi, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. The Hon. Alice Wahome, MP
3. The Hon. William Kamoti, MP
4. The Hon. Timothy Wanyonyi, MP
5. The Hon. George Murugara, MP
6. The Hon. Muriuki Njagagua, MP
7. The Hon. Jennifer Shamalla, MP
8. The Hon. Munene Wambugu, MP
9. The Hon. Sammy Seroney, MP
10. The Hon. Muturi Kigano, MP
11. The Hon. Martha Wangari, MP
12. The Hon. (Dr.) Wilberforce Oundo, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP
3. The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Third Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Mr. Brian Wechabe - Intern, Legal Officer
5. Mr. Charles Ayari - Audio Records Officer
6. Ms. Mary Otieno - Office Superintendent

MIN.NO. /NA/CDL/2019/095

PRAYER AND RELIMINARIES

The meeting commenced at 11.45 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/096

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 15th, 16th, 17th, 18th, 19th, 20th and 21st sittings were read and confirmed as true record of the proceedings as follows –

Minutes of the 15th sitting held on 4th March, 2019 were proposed by Hon. Ronald Tonui, MP and seconded by Hon. Kamket Kassait, MP;

Minutes of the 16th sitting held on 15th April, 2019 were proposed by Hon. Waihenya Ndirangu, MP and seconded by Hon. Patrick Mariru, MP;

Minutes of the 17th sitting held on 15th April, 2019 were proposed by Hon. Waihenya Ndirangu, MP and seconded by Hon. Patrick Mariru, MP;

Minutes of the 18th sitting held on 16th April, 2019 were proposed by Hon. Robert Mbui, MP and seconded by Hon. Patrick Mariru, MP;

Minutes of the 19th sitting held on 16th April, 2019 were proposed by Hon. Waihenya Ndirangu, MP and seconded by Hon. Robert Mbui, MP;

Minutes of the 20th sitting held on 17th April, 2019 were proposed by Hon. Waihenya Ndirangu, MP and seconded by Hon. Robert Mbui, MP; and

Minutes of the 21st sitting held on 17th April, 2019 were proposed by Hon. Patrick Mariru, MP and seconded by Hon. Robert Mbui, MP.

MIN.NO. /NA/CDL/2019/097

MATTERS ARISING

Under Min. MIN.NO. /NA/CDL/2019/090 - Way forward

On the way forward for Biashara Kenya Fund Regulations, the Committee observed that the correct position is that the Committee was not convinced of the proposed merger of the three Funds as proposed.

MIN.NO. /NA/CDL/2019/098

CONSIDERATION OF CROPS (IRISH POTATO) REGULATIONS, 2019

The Committee was briefed as follows – THAT

1. the Crops (Irish Potato) Regulations, 2019 are made pursuant to the Crops Act (*No. 16 of 2013*) by the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation, in consultation with the Agriculture and Food Authority and the County Governments;
2. pursuant to section 16 of the Statutory Instruments Act that requires the Committee to confer with the regulation making authority, the Cabinet Secretary accompanied by the Agriculture and Food Authority appeared before the Committee on Tuesday, 5th February, 2019, at Whitesands Beach Hotel in Mombasa and made a detailed presentation to the Members on the Crops (Irish Potato) Regulations;
3. the Regulations were published in the special issue of the Kenya Gazette as *LN. No 17 of 2019* on 5th of April, 2019 and tabled before the House on 23rd April, 2019, being

within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act; and

4. the Regulations seek to put in place measures that will improve potato standards and trade; and streamline stakeholder operations in the value chain.

Committee Observations

The Committee made the following observations – THAT

- 1) the Regulations were submitted to the National Assembly within the Statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*);
- 2) the Regulations are made pursuant to section 40 of the Crops Act, (*No. 16 of 2013*) which is the enabling section empowering the Cabinet Secretary to make Regulations on any crop;
- 3) Section 40 of the Crops Act, requires the Cabinet Secretary to consult the Agriculture and Food Authority and the County Governments. The Ministry demonstrated that consultations were sufficiently demonstrated when the Cabinet Secretary appeared before the Committee accompanied by the Agriculture and Food Authority and in the bundle of documents submitted to the Committee;
- 4) there is attached to the Regulations, a detailed Explanatory Memorandum which provides for the justification of making of the Regulations including solutions to the challenges currently faced in the industry due to lack of Regulations and the positive economic impact of regulating the Irish potato as a scheduled crop which is within their powers as contemplated in the section 40 and the Schedule to the Act;
- 5) there is annexed to the Explanatory Memorandum, a list of persons, institutions, stakeholders involved in the consultations at different stages and the consultation outcomes therefrom, detailing public participation in seventeen counties especially the potato growing areas and the list of attendance during the consultation meetings; and
- 6) there is also annexed a copy of notification both in the Kenya Gazette and Newspapers of the preparation of the Regulatory Impact Statement on the impact of the Regulations on persons likely to be affected by the implementation of the Regulations, in accordance with sections 6, 7 and 9 of the. Statutory Instruments Act.

Way Forward

The Committee having scrutinized the **Crops (Irish Potato) Regulations, 2019** satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Crops Act (*No 16 of 2013*) the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Robert Mbui, MP, and seconded by Hon. Ronald Tonui, MP.

MIN.NO. /NA/CDL/2019/099

PENDING BUSINESS BEFORE THE COMMITTEE

The Committee considered the following pending business: -

1. **Public Health (Control of Shisha Smoking) Rules, 2017:** the Committee was notified about a letter dated 17th April, 2019 from the Cabinet Secretary for Health forwarding Explanatory Memorandum the control of Public Health (Control of Shisha Smoking) Rules, 2017. The Committee however, noted that the submission was not accompanied by the said Rules.

The Committee therefore resolved to **invite the Cabinet Secretary for Health to appear before the Committee on Thursday 9th May, 2019 at 10.00 am** to apprise the Committee on the status of the Public Health (Control of Shisha Smoking) Rules, 2017.

2. **Legal Notice No. 127 of 2018 - Ban on importation of used vehicles older than seven years:** the Committee raised concerns that the Ministry of Industry, Trade and Cooperatives and the Kenya Bureau of Standards failed to comply with section 11(1) of the Statutory Instruments Act (*No. 23 of 2013*) by not submitting LN 127 of 2018 to the National Assembly for scrutiny.

The Committee therefore resolved to invite the Cabinet Secretary for Industry, Trade and Cooperatives and the Kenya Bureau of Standards to appear before the Committee on **Thursday 9th May, 2019 at 11.30 a.m.** to discuss the Public Notice (importers of used/second hand road vehicles) on Kenya Standard of Imports Order, proposing to reduce the 8-year requirement for importation of used motor vehicles.

3. **Pre-publication scrutiny of the draft Law Society of Kenya (General) Regulations, 2019:** the Committee deferred consideration of the draft Regulations to June, 2019.
4. **Draft Judicial Code of Conduct:** the Committee was informed that the Judicial Service Commission submitted evidence of public participation to the National Assembly on 23rd April, 2019. The secretariat to prepare a brief and present to the Committee in the next meeting.
5. **Non-Compliance by Regulation Making Authorities:** The Committee observed with concern that various regulation making authorities have failed to comply with section 11 of the Statutory Instruments Act. The Committee therefore proposed an amendment to section 11 to enhance enforceability of the Act. The Committee to also write to the Attorney General, the Chief Justice and regulation making authorities on the requirement to submit instruments for scrutiny.

An advertisement to also be placed in the local dailies to inform the public about the requirements of the SI Act.

MIN.NO. /NA/CDL/2019/100

ADJOURNMENT

The meeting was adjourned at 12.45 p.m. until Thursday, 9th May, 2019 at 10.00am.

Signed: 

Date: 9/5/2019

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

MINUTES OF THE 20TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 17TH APRIL, 2019, AT 9.30 A.M. IN KARIBU CONFERENCE ROOM AT TRAVELLERS BEACH HOTEL, MOMBASA

PRESENT

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. The Hon. Fatuma Gedi, MP - **Vice Chairperson**
3. The Hon. Robert Mbui, MP
4. The Hon. Waihenya Ndirangu, MP
5. The Hon. Alice Wahome, MP
6. The Hon. Timothy Wanyonyi, MP
7. The Hon. Muriuki Njagagua, MP
8. The Hon. (Dr.) Wilberforce Oundo, MP
9. The Hon. Patrick Mariru, MP
10. The Hon. Munene Wambugu, MP
11. The Hon. George Murugara, MP
12. The Hon. Jennifer Shamalla, MP

ABSENT WITH APOLOGY

1. The Hon. Ronald Tonui, MP
2. The Hon. Martha Wangari, MP
3. The Hon. Daniel Maanzo, MP
4. The Hon. William Kamoti, MP
5. The Hon. Sammy Seroney, MP
6. The Hon. Muturi Kigano, MP
7. The Hon. Gideon Mulyungi, MP
8. The Hon. Kamket Kassait, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP
3. The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|----------------------|---|-----------------------------|
| Mr. Jimale Mohamed | - | Third Clerk Assistant |
| Mr. Dima Dima | - | Principal Legal Counsel |
| Mr. Humphrey Ringera | - | Research and Policy Analyst |
| Ms. Alice Kitur | - | Executive Secretary |
| Mr. Anthony Wamae | - | Serjeant at Arms |
| Mr. Charles Ayari | - | Audio Records Officer |
| Ms. Mary Otieno | - | Office Superintendent |

THE NATIONAL TREASURY AND PLANNING

Mr. Geoffrey Malumbe	-	Senior Deputy Director Accountant General
Mr. Ronald Osumba	-	Chairman, Taskforce, Biashara Kenya Fund
Ms. Irene Muatha	-	Economist
Mr. Lawrence Muthama	-	Principal Budget & Economist
Mr. Solommon Ngahu	-	Ag. Principal Accountant
Mr. Kennedy Pambo	-	Economist
Mr. Ronald Inyanyali	-	Senior Ass. Director
Ms. CPA Isabella Kogei	-	Parliamentary Liaison Officer
Mr. Fredrick Mrei	-	Monitoring of Policy Service

MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER

Hon. Rachel Shebesh	-	Chief Administrative Secretary
Dr. F. O Owino	-	Principal Secretary, SD for Public Service
Mr. Monasi A. Jonahi	-	CEO, Youth Enterprise Development Fund
Mr. James A Sangori	-	Director Gender
Mr. Livingstone Bumbs	-	Deputy Director, Gender
Mr. Charles Mwirigi	-	CEO, Women Enterprise Fund
Ms. Stella Kitonga	-	Ministry of Public Service, Youth and Gender

MIN.NO. /NA/CDL/2019/088 PRELIMINARIES

The session resumed with a word of prayer at 10.00 a.m.

MIN.NO. /NA/CDL/2019/089 OPENING REMARKS

Remarks by the Chairperson Delegated Legislation

The Chairperson welcomed the delegation from the National Treasury and Ministry of Public Service, Youth and Gender, led by Hon. Rachel Shebesh, the Chief Administrative Secretary, of the Ministry of Public Service, Youth to the retreat and then requested all participants to introduce themselves.

She thanked the Chief Administrative Secretary for her availability to engage the Committee on the proposed draft Regulations. She noted that the retreat would assist Members to expedite the consideration of the Regulations pursuant to the provisions of Standing Order No. 210 and the SI Act.

She acknowledged the dedication and commitment of the Members of the Committee on Delegated Legislation in scrutiny of statutory instruments.

She also thanked the CAS and the entire delegation from the two Ministries for consulting the Committee prior to publication of the Regulations. She pointed out that engagement with the Committee is very critical in ensuring all Regulations prepared under the Public Finance Management, 2012 have met the threshold of public consultation and openness.

She thereafter invited the CAS for the Ministry of Public Service, Youth and Gender to make her remarks.

Remarks by Hon. Rachel Shebesh, Chief Administrative Secretary of the Ministry of Public Service, Youth and Gender

On her part, the CAS appreciated the Committee for finding time to engage with the Ministry for the pre-publication scrutiny of Biashara Kenya Fund Regulations. She indicated that the National Treasury & Planning and the Ministry developed a policy for merging the three existing funds, namely, Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF) and the UWEZO Fund into one Fund called Biashara Kenya Fund.

The Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF) and the UWEZO Fund are currently domiciled in the Ministry of Public Service, Youth and Gender Affairs.

She informed the meeting that the critical role that Women, Youth and Persons with Disability Enterprises as well as Micro, Small, and Medium Enterprises (SME's) play in the nation's socio-economic development, employment creation and contribution to growth of Gross Domestic Product (GDP), is well recognized in Kenya's economic blueprint, the Vision 2030. However, the fragmented approach to supporting, financing and developing SMEs, hinders their incubation and take off, particularly those owned and managed by youth, women, persons living with disabilities and other minority groups.

The Women Fund has been associated with success unlike the other Funds that had witnessed challenges in the past. She assured Members that women groups, youth, persons with disability will not be left out in accessing funds from the proposed Fund. She also pledged that Access to Government Procurement (AGPO) will be fully implemented to reach the target Kshs. 1 billion in the near future. The CAS concluded by requesting the Committee's support in finalizing the proposed Regulations.

She thereafter invited Mr. Geoffrey Malombe, Senior Deputy Director Accountant General in the National Treasury to make presentation on the proposed Fund and its Regulations.

**MIN.NO. /NA/CDL/2019/090 CONSIDERATION OF DRAFT PUBLIC FINANCE
MANAGEMENT (BIASHARA KENYA FUND)
REGULATIONS, 2019**

Mr. Malombe presented the draft Regulations as follows –

1. Establishment of Biashara Kenya Fund

- i) The Objectives of the Fund are provided for in Reg. 7;
- ii) The main sources of monies to the Fund are stipulated in Reg. 4 and they include: monies appropriated by Parliament for the purposes of the Fund; income-generated from the proceeds of the Fund; income from investments made by the Fund; grants, donations,

bequests or other gifts made to the Fund and monies from any other source approved by the Cabinet Secretary.

2. Management of the Fund

Reg. 8 stipulates the composition of the Advisory Board as follows –

- i) Non-Executive Chairperson – appointed by the President. Qualifications include: a university degree, not less than ten years' experience in strategic management, enterprise development, finance, law, accounting, engineering or economics and meets requirements of chapter six of the Constitution.
- ii) 4 Principal Secretaries responsible for National Treasury, Gender Affairs, Youth Affairs and Micro, Small and Medium Enterprises.
- iii) Four other persons from outside public service appointed by Cabinet Secretary / Gender Affairs. Qualifications include experience of not less than 5 years in relevant field and meets requirements of chapter six of the Constitution.

3. Criteria and Procedures

Reg. 13 stipulates the eligibility criteria for each target group to access funds while Reg. 14 (3) provides the criteria for evaluating loan applications.

Being an affirmative action fund, Biashara Kenya Fund will ensure preferential treatment is granted to enterprises owned by women, youth, persons with disability and thereafter other micro, small and medium enterprises will be considered. It is therefore expected that the provisions of the proposed Public Finance Management (Biashara Kenya Fund) Regulations, 2019 will provide a sufficient framework for the government to meet its primary responsibility of ensuring that objects and purposes of the Fund are met.

It is also expected that the governance structures provided in the Regulations will ensure transparency and accountability of funds.

Plenary Discussions

The following matters arose following the presentation on the Regulations –

1. The Ministry should consider addressing the challenges facing individual funds, improve their efficiency, resource them adequately and improve on accountability structure instead of the proposed merger by exploring the possibility of borrowing best practices from Funds that have performed well, e.g. the Women Enterprise Development Fund.
2. The Committee further observed that the merger seems speculative and does not provide any tangible strategies to address the challenges facing the current Funds. The merger will also result in the loss of identity for women and youth and likely marginalise PWDs;
3. The proposed Regulations should address the perceived biases towards women and youth in the society that has presumably marginalised older men in the society;
4. The proposed Regulations appear to be punitive to those who have been accessing the Funds in a bid to encourage new beneficiaries;

5. Members proposed that MPs should be involved in identification and support of different target groups since local leaders understand local dynamics.
6. The remedy for defaulters in the proposed Regulations needs to be well elaborated.
7. The merger should guard against private entities and intermediaries trading with the monies from the Fund;
8. Under Reg. 11 and Reg. 12, the Government should not micro-manage the day-to-day running of the Fund.

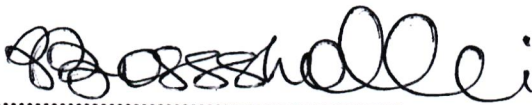
Way forward

The Committee advised the Ministry to ensure that the draft Regulations are further reviewed taking into consideration the deliberations of the meeting and ensure that all concerns raised in the meeting are captured in a matrix and resubmitted to the Committee for further scrutiny.

MIN.NO. /NA/CDL/2019/091 ADJOURNMENT

The meeting was adjourned at 12.15 p.m. to be reconvened same day on 17th April, 2019 at 2.00 p.m.

Signed:



Date:

02/05/2019

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance-Nairobi
Fax No.: 310833
Telephone: 2252299
When Replying Please Quote;

THE NATIONAL TREASURY
P.O. Box 30007
NAIROBI

Ref. No: AG. 13/88/VOL I/(105)

26th June, 2019

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Building
NAIROBI

Dear

Mr. Sialai

*ODLP
to register
and
table
in the
House.*

Stamp: RECEIVED 27 JUN 2019 CLERK'S OFFICE

*Head table file
in clear
to per
CBSA's
instructions
15/6/19
27/6*

*3
Please register
and process
table by
Tuesday
17/6/19*


- RE: **TABLING OF THE FOLLOWING REGULATIONS IN THE HOUSE: -**
- i. **THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2019;**
 - ii. **THE PUBLIC FINANCE MANAGEMENT (UWEZO FUND) (REVOCATION) REGULATIONS, 2019;**
 - iii. **THE PUBLIC FINANCE MANAGEMENT (WOMEN ENTERPRISE FUND) (REVOCATION) REGULATIONS, 2019; AND**
 - iv. **THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE DEVELOPMENT FUND) (REVOCATION) REGULATIONS, 2019.**

The Public Finance Management (Biashara Kenya Fund) Regulations, 2019 Legal Notice No. 78 of 2019; the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 Legal Notice No. 79 of 2019; the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 Legal Notice No. 80 of 2019; and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 Legal Notice No. 81 of 2019, have been published in accordance with the Statutory Instruments Act.

The purpose of this letter therefore, is to transmit to you the published Public Finance Management (Biashara Kenya Fund) Regulations, 2019 Legal Notice No. 78 of 2019, Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 Legal Notice No. 79 of 2019, Public Finance Management

(Women Enterprise Fund) (Revocation) Regulations, 2019 Legal Notice No. 80 of 2019, and Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 Legal Notice No. 81 of 2019 as well as request you to facilitate the tabling of the Regulations in the House.

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

Yours *Sincerely*


DR. KAMAU THUGGE, CBS
PRINCIPAL SECRETARY/NATIONAL TREASURY

Ecls.

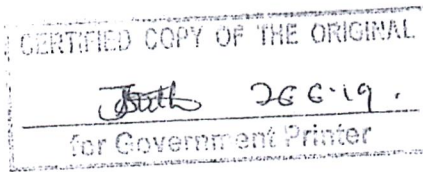
Copy to: **Henry Rotich, EGH**
Cabinet Secretary
National Treasury and Planning
NAIROBI

Prof. Margaret Kobia, PhD, MGH
Cabinet Secretary
Ministry of Public Service, Youth & Gender Affairs
NAIROBI

Hon. Gladys Boss Shollei, CBS
Chairperson
Committee on Delegated Legislation
National Assembly
NAIROBI

Dr. Francis O. Owino, PhD
Principal Secretary
State Department of Public Service & Youth Affairs
Ministry of Public Service, Youth & Gender Affairs
NAIROBI

Ms. Safina Kwekwe, CBS
Principal Secretary
State Department for Gender
Ministry of Public Service, Youth & Gender Affairs
NAIROBI



SPECIAL ISSUE

335

Kenya Gazette Supplement No. 83

13th June, 2019

(Legislative Supplement No. 26)

LEGAL NOTICE NO. 79

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

**THE PUBLIC FINANCE MANAGEMENT (UWEZO FUND)
(REVOCATION) REGULATIONS, 2019**

1. These Regulations may be cited as the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019.

Citation.

2. The Uwezo Fund established under the Public Finance Management (Uwezo Fund) Regulations, 2014 is wound up.

Winding up.
LN 21 of 2014

3. (1) Any amounts remaining in the Uwezo Fund shall be paid into the National Exchequer Account for the credit of the national government.

Transfer of
outstanding
amounts.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Uwezo Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

4. (1) In this regulation, unless the context otherwise requires—

Transition of staff.

“Administrator” means the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose;

“Biashara Kenya Fund” means the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019.

(2) Subject to paragraph (4), a person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Uwezo Fund shall serve in the Biashara Kenya Fund.

(3) Despite Regulation (2), employees of the Government serving in the Uwezo Fund immediately before the commencement of these Regulations shall, upon the commencement of these Regulations, be given an option to serve in the Biashara Kenya Fund and if not appointed be redeployed in the public service.

(4) Before appointing a person to whom paragraph (2) applies, the Administrator, in consultation with the Public Service Commission, shall—

- (a) require such person to make an application for employment or appointment to the Fund; and
- (b) using the criteria determined by the Public Service Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for in the Biashara Kenya Fund.

(5) A person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Uwezo Fund immediately before the commencement of these Regulations, who fails to meet the vetting criteria set under paragraph (4), may be deployed in the public service.

(6) Notwithstanding the provisions of this regulation, and for as long as the Administrator has not appointed staff to serve in the Biashara Kenya Fund, the staff of the Uwezo Fund shall continue to perform those functions and their acts shall be deemed to be those of the Biashara Kenya Fund.

5. The Government Financial Management (Uwezo Fund) Regulations, 2014 are revoked.

Revocation.
LN 21 of 2014

Dated the 31st May, 2019.

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

LEGAL NOTICE NO. 80

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (WOMEN ENTERPRISE FUND) (REVOCATION) REGULATIONS, 2019

1. These Regulations may be cited as the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019.

Citation.

2. The Women Enterprise Fund established under the Government Financial Management (Women Enterprise Fund) Regulations, 2007 is wound up.

Winding up.
LN 147 of 2007

3. (1) Any amounts remaining in the Women Enterprise Fund shall be paid into the National Exchequer Account for the credit of the national government.

Transfer of
outstanding
amounts.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Women Enterprise Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

4. (1) In this Regulation, unless the context otherwise requires—

Transition of staff.

“Administrator” means the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose;

“Biashara Kenya Fund” means the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019.

(2) Subject to paragraph (5), a person who, immediately before the commencement of these Regulations, was serving on contract in the Women Enterprise Fund shall, at the commencement of these Regulations, serve in the Biashara Kenya Fund for the unexpired period, if any, of the term.

(3) Subject to paragraph (5), every person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Women Enterprise Fund shall serve in the Biashara Kenya Fund.

(4) Despite paragraph (5), employees of the Government in the Women Enterprise Fund immediately before the commencement of these Regulations shall, upon the commencement of these Regulations, be given an option to in serve the Biashara Kenya Fund and if not appointed by the Administrator be redeployed in the public service.

(5) Before appointing a person to whom paragraph (2) or (3) apply, the Administrator, in consultation with the Public Service Commission, shall—

- (a) require such person to make an application for employment or appointment to the Biashara Kenya Fund; and
- (b) using the criteria determined by the Public Service Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for in the Biashara Kenya Fund.

(6) An applicant who was serving on contract under paragraph (2) who fails to meet the vetting criteria set under paragraph (5), shall be allowed to serve for the remaining period of the contract or his or her services terminated in accordance with the terms and conditions of his contract.

(7) A person who, immediately before the commencement of this Regulations, was an employee of the of the Government serving in the Women Enterprise Fund immediately before the commencement of these Regulations who fails to meet the vetting criteria set under paragraph (5), may deployed in the public service.



(8) Notwithstanding the provisions of this regulation, and for as long as the Administrator has not appointed staff to serve in the Biashara Kenya Fund, the staff of the Women Enterprise Fund shall continue to perform those functions and their acts shall be deemed to be those of the Biashara Kenya Fund.

5. The Government Financial Management (Women Enterprise Fund) Regulations, 2007 are revoked.

Revocation.
LN 147 of 2007

Dated the 31st May, 2019.

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

LEGAL NOTICE NO. 81

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE DEVELOPMENT FUND) (REVOCATION) REGULATIONS, 2019

1. These Regulations may be cited as the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019.

Citation.

2. The Youth Enterprise Fund established under the Government Financial Management (Youth Enterprise Development Fund) Regulations, 2007 is wound up.

Winding up.
LN 167 of 2006

3. (1) Any amounts remaining in the Youth Enterprise Development Fund shall be paid into the National Exchequer Account for the credit of the national government.

Transfer of
outstanding
amounts.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Youth Enterprise Development Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

4. The Government Financial Management (Youth Enterprise Development Fund) Regulations, 2006 are revoked.

Revocation.
LN 167 of 2006

Dated the 31st May, 2019.

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



BACKGROUND AND EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2018 AND THE LEGAL NOTICES ON THE REVOCATION

.....

A. The Purpose of Public Finance Management (Biashara Kenya Fund) Regulations, 2018:

1. The purpose of these Regulations is to provide a one-stop shop for targeted groups looking for business loans from Government, to improve effectiveness and to eliminate overlaps. The overarching goal is to enhance economic participation of youth, women, people living with disabilities, and Micro, Small and medium enterprises in creation of jobs and general economic development. The Fund is envisaged to take advantage of economies of scale, leverage on the branch networks and other products that were provided by the targeted Funds for merger, while avoiding duplication of functions and efforts.
2. Biashara Kenya Fund's mandate will be to provide affordable financing, business support services, affordable commercial infrastructure, and market linkages to enterprises owned by Youth, Women, people living with disabilities and micro, small, and medium enterprises.
3. The Fund's intervention in supporting SMEs is expected to achieve the following outcomes:
 - a. improved household income of the targeted groups;
 - b. expanded access to affordable credit;
 - c. increased capacity building and skills development;
 - d. formalized and mature SMEs in retail trade;
 - e. strengthened SMEs industry;
 - f. improved ICT infrastructure, facilities and services;
 - g. expanded market linkages; and

h. increased uptake of Access to Government Procurement Opportunities (AGPO).

4. To achieve this purpose, the Regulations in particular:

- i. specify the sources, expenditure, capital, object and purpose of the Fund;
- j. provide guidance on the administration and management of the Fund;
- k. establish the Biashara Kenya Fund Board to oversee the Fund and advise the Cabinet Secretary on the proper and effective performance of the Fund;
- l. provide for the withdrawals from the Fund,
- m. specify the loan eligibility criteria, application procedures, conditions for disbursement, interests and loan repayments
- n. provide for investments of the Fund
- o. provides for retention of receipts and earnings of the Fund
- p. provides for offences and penalties
- q. provide for the winding up of the Fund.

B. 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 for establishment under this section.
6. In addition, these Regulations are intended to operationalize Articles 27, 55(b)(c) and 56(b)(c) which provides for affirmative action programmes and other resources in respect to disadvantaged groups and youth aimed at ensuring equitable development of the State.
7. Towards this end, the following affirmative action Funds are proposed for merging into Biashara Kenya Fund:

- a. **Uwezo Fund** established under the legal Notice No 21 of 21st February 2014 pursuant to the Public Finance Management Act (No 18 of 2012);
 - b. **Youth Enterprise Development Fund** established under Legal Notice No. 167 pursuant to the Government Financial Management Act (No. 5 of 2004). The Fund was then transformed into a State Corporation under the Ministry of Public Service, Youth and Gender Affairs in 2007 and hence operates under two legal regimes.
 - c. **Women Enterprise Fund** established under legal Notice No. 147 of 3rd August 2007 pursuant to the government Financial Management Act (No.5 of 2004).
8. Therefore, the establishment of Biashara Kenya Fund through the proposed Regulations to merge these Funds will also require revocation of the following legal instruments:
- a. Legal Notice No. 147 under the Government Financial Management Act, 2012;
 - b. Legal Notice No. 167 under the Government Financial Management Act, 2012 and the Executive Order Legal Notice No. 63 of 2007; and
 - c. Legal Notice No 21 under the Public Finance Management Act, 2012.
9. The National Treasury also complied with the provisions of the Statutory Instruments Act while preparing these Regulations.

C. Policy Background

10. The policy foundation for creating Biashara Kenya Fund as the Government's principal Fund for developing SMEs, especially those owned by Youth, Women and persons living with disabilities, is the Vision 2030. Further, there is a critical link between the Fund, the SMEs and the socio-economic empowerment agenda of the Government that feeds into the four broad areas: increasing manufacturing share of Gross Domestic Product from 9.2 percent to 15 percent through

promoting businesses and enterprises; ensuring food security in the country; building one (1) million housing units; and ensuring 100% health coverage over the next five years.

11. The Presidential Taskforce on Parastatal Reforms, 2013, recommended the merger of all Funds and initiatives for supporting, financing and developing SMEs, including the Micro and Small Enterprises Authority, Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF) and the Uwezo Fund to form Biashara Kenya Fund. All these Funds have the same objective of developing Micro, Small and Medium Scale Enterprises, with a greater emphasis to those owned by youth, women and persons living with disabilities. Therefore, the Regulations are intended to operationalize the Presidential Taskforce on Parastatals Reform Report, which was adopted by Government in 2014.
12. The critical role that youth, women, persons with disabilities enterprises and micro, small, and medium Enterprises (SME's) play in the nation's economic development and employment creation is well recognized in Kenya's economic blueprint, the Vision 2050, and the Big Four agenda. The socio-economic empowerment of the marginalized groups is an important agenda of the Government. Over the past ten years, the Government has been supporting expansion of financial access and inclusion of women, youth, people living with disabilities and other groups through affirmative action Funds.
13. While these initiatives have recorded significant socio-economic impact, their fragmented approach to supporting, financing and developing SMEs, have hindered the incubation and take off of enterprises, particularly those owned and managed by youth, women, persons living with disabilities and other minorities. In addition, the segmented approach has resulted into duplication of roles and challenges in governance among the Funds that have resulted to high repayment defaults.
14. Therefore, the Government intends to merge the affirmative action Funds into one Fund (Biashara Kenya Fund) in order to provide a one-stop shop for targeted

groups looking for business loans from Government, to improve effectiveness and to eliminate overlaps. The overarching goal is to enhance economic participation of youth, women, people living with disabilities, and micro, small and medium enterprise in creation of jobs and general economic development. The Fund is envisaged to take advantage of economies of scale, leverage on the branch networks and other products that were established by the proposed Funds for merger, while avoiding duplication of functions and efforts.

15. The services offered by the UWEZO Fund, Youth Enterprise Development Fund and Women Enterprise Fund will be accessible to the beneficiaries through the Biashara Kenya Fund once they are wound-up. Biashara Kenya Fund will be larger and will prioritize enterprises owned by the youth, women and persons living with disabilities. This is important, especially to the youth who are largely not organized into 'groups' (as is the case for women), as they can access the Fund as sole proprietors.

D. Public Consultations

16. While preparing the Public Finance Management (Biashara Kenya Fund) Regulations, 2019, consultations were done with key stakeholders and their input taken into account in finalization of these Regulations. Some of the key stakeholders' consulted included: are Chairpersons and Chief Executive Officers of the Funds being merged; Ministry officials responsible for policy in Ministry of Industry, Trade and Cooperatives and Ministry of Youth and Gender Affairs. In addition, consultations were also held with the National Assembly's Committee on Delegated Legislation. The Task Force members were also drawn from the different relevant institutions in order to enhance consultations during development of the Regulations.
17. It is important to appreciate different stakeholders had different views especially on the mode of implementation of the Biashara Kenya Fund, but largely agreed on the need to provide a one stop shop.

E. Guidance

18. The National Treasury and the Administrator of the Fund (Principal Secretary/ Gender Affairs) will sensitize stakeholders including Parliament, accounting officers, of National and County governments and the general public, on the process of accessing the Biashara Kenya Fund, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both Houses of Parliament.

F. Performance Monitoring and Evaluation of the Biashara Kenya Fund

19. The National Treasury shall monitor the application of the Biashara Kenya Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, the Fund Secretariat shall be responsible for implementing the Fund and will also carry out regular monitoring and evaluation of the specific programmes, projects and initiatives funded through the Fund.

G. National Treasury Contact Person.

20. The contact person at the National Treasury is the Cabinet Secretary, Mr. Henry Rotich, EGH or the Principal Secretary, Dr. Kamau Thugge, CBS



HENRY ROTICH, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY & PLANNING

Date..... 25th June 2019.