

Approved for tabling

BAT
SNA
23/8/18



Paper laid
By Hon. G. Boss Shirei MP
Chair - Committee on Delegated
Legislation on Thurs.
23.08.2018 (PM)
MM

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE TAX
PROCEDURES (TAX AGENTS) REGULATIONS, 2018

(Legal Notice. No. 138 of 2018)

AUGUST 2018

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



TABLE OF CONTENTS

ABBREVIATIONS	ii
CHAIRPERSON’S FOREWORD	1
1.0 PREFACE	3
1.1 Establishment and Mandate of the Committee	3
1.2 Committee Membership	4
1.3 Committee Secretariat	5
2.0 CONSIDERATION OF THE INSTRUMENT	6
2.1 Introduction and Background Information.....	6
2.2 Scrutiny of the Instrument.....	7
2.3 Committee Observations	8
3.0 RECOMMENDATION	9
ANNEXURES	10

ABBREVIATIONS

KRA	Kenya Revenue Authority
LN	Legal Notice
RMA	Regulatory Making Authority
SI Act	Statutory Instruments Act
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by **section 112 of the Tax Procedures Act, 2015**, the Cabinet Secretary for the National Treasury and Planning published the **Tax Procedures (Tax Agents) Regulations, 2018** on 29th June 2018 **vide LN No.138/2018** as a subsidiary legislation under the Tax Procedures Act, 2015.

The Regulations seek to;

- (a) prescribe the conditions and procedures for registration of tax agents;
- (b) outline the functions of a tax agent who is usually a member of the Institute of Certified Public Accountants, an advocate of Kenya with a valid practising certificate or a former administrator with at least ten years' experience in tax administration;
- (c) require the Commissioner-General of the Kenya Revenue Authority to maintain a register of tax agents;
- (d) establishes a Tax Agents Committee which shall consider applications for registration of tax agents;
- (e) prescribes the procedure for investigations of allegations of misconduct against a tax agent; and sets offences and penalties.

Section 19 of the Tax Procedures Act, 2015 which commenced on 19th January, 2016 provides that an individual or a partnership can apply to the Commissioner General of KRA for a license as a tax agent in a prescribed form. The recommendation for registration will be made by the Tax Agents Committee.

Section 20 provides that the Commissioner shall issue a license to a fit and proper applicant. It further provides that Regulations may provide for guidelines for determining whether or not a person is fit and proper to prepare tax returns.

In considering the said Regulations on 17th August, 2018 the Committee conferred with the regulation-making authority, i.e., the National Treasury, at a retreat in Kisumu County, pursuant to Section 16 of the Statutory Instruments Act (SI Act), 2013. The delegation from the National Treasury was led by the **Chief Administrative Secretary, Hon. Nelson Gaichuhie**.

The Committee then proceeded to scrutinise the Regulations where it resolved to annul them in entirety for the reasons advanced in section 2.0 of this Report.

The Committee was guided by the Constitution of Kenya, the Tax Procedures Act, 2015, 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.

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 Tax Procedures (Tax Agents) Regulations, 2018.

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 provision 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 as constituted by the House in December 2017 comprises the following Members –

- 1. **Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
- 2. **Hon. Fatuma Gedi, MP** - **Vice- Chairperson**
- 3. Hon. Isaac Waihenya Ndirangu, MP
- 4. Hon. Alice Wahome, MP
- 5. Hon. Robert Mbui, MP
- 6. Hon. Daniel Maanzo, MP
- 7. Hon. Muriuki Njagagua, MP
- 8. Hon. Timothy Wanyonyi, MP
- 9. Hon. Alfred Bernard Wekesa Sambu, MP
- 10. Hon. Ronald Kiprotich Tonui, MP
- 11. Hon. William Kamoti, MP
- 12. Hon. Charles Gimose, MP
- 13. Hon. William Kamket Kassait, MP
- 14. Hon. Martha Wangari, MP
- 15. Hon. (Dr.) Wilberforce Oundo, MP
- 16. Hon. Abdi Koropu 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. Patrick Kariuki Mariru, MP
- 22. Hon. Sammy Seroney, MP

1.3 Committee Secretariat

The secretariat comprises of the following members of staff –

Mr. Susan Maritim	Senior Clerk Assistant (Team Leader)
Mr. Jimale Mohamed	Clerk Assistant III
Mr. Dima Dima	Principal Legal Counsel
Ms. Mugure Gituto	Legal Counsel II
Ms. Anne N. Kigoro	Research & Policy Analyst
Mr. Joshat Motonu	Fiscal Analyst

2.0 CONSIDERATION OF THE INSTRUMENT

2.1 Introduction and Background Information

In exercise of the powers conferred by section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Planning published the **Tax Procedures (Tax Agents) Regulations, 2018** on 29th June 2018 vide LN No.138/2018 as a subsidiary legislation under the Tax Procedures Act, 2015.

Purpose of the Regulations

The Regulations seek to;

- (a) prescribe the conditions and procedures for registration of tax agents;
- (b) outline the functions of a tax agent who is usually a member of the Institute of Certified Public Accountants, an advocate of Kenya with a valid practising certificate or a former administrator with at least ten years' experience in tax administration;
- (c) require the Commissioner-General of the Kenya Revenue Authority to maintain a register of tax agents;
- (d) establish a Tax Agents Committee which shall consider applications for registration of tax agents;
- (e) prescribe the procedure for investigations of allegations of misconduct against a tax agent; and
- (f) set offences and penalties.

Expected Benefit of the Regulations

The expected benefit of the Regulations is to allow tax payers to seek the services of a professional tax agent to allow compliance with requirements of the tax law. This is meant to ensure that tax compliance is improved across the economy, thus enhancing revenue administration.

Section 19 of the Tax Procedures Act, 2015 which commenced on 19th January, 2016 provides that an individual or a partnership can apply to the Commissioner General of KRA for a license as a tax agent in a prescribed form. The recommendation for registration will be made by the Tax Agents Committee.

Section 20 provides that the Commissioner shall issue a license to a fit and proper applicant. It further provides that Regulations may provide for guidelines for determining whether or not a person is fit and proper to prepare tax returns.

2.2 Scrutiny of the Instrument

The **Tax Procedures (Tax Agents) Regulations, 2018** were published on 29th June, 2018 vide LN NO.138/2018 and tabled before the National Assembly on 4th July 2018. This is **within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**

The Regulations are **unlikely to impose significant costs** on the community or a part of the community and hence the regulatory impact assessment was not prepared for these Regulations pursuant to section 6.

The scrutiny was undertaken in conformity with the Constitution of Kenya, the Tax Procedures Act, 2015, 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.

Meeting with the Regulation-Making Authority

In considering the Tax Procedures (Tax Agents) Regulations, 2018, the Committee held a meeting with the regulation-making authority, the National Treasury on 17th August, 2018 in Kisumu City. The Ministry was represented by Hon. Nelson Gaichuhie, the Chief Administrative Secretary and other Ministry officials.

The Committee was informed that the guidelines for registration and licensing of tax agents were provided for under Section 24A of the Kenya Revenue Authority (KRA) Act, as the Kenya Revenue Authority (Tax Agents) Regulations, 2012. The Tax Procedures Act which was enacted in 2015 in order to consolidate tax procedures and administration processes repealed the said section of the KRA Act. This has therefore brought ambiguity regarding the validity of the Tax Regulations.

The Committee further heard that Section 19(1) of Tax Procedures Act, 2015 provides for licensing of tax agents while Section 20(3) provides for issuance of Regulations under the Tax Procedures Act, 2015 to provide for guidelines for determining fitness of a person to be a tax agent.

The Regulations seek to transfer and anchor the tax agents' regulation under the Tax Procedures Act, 2015. The Regulations were initially issued in the year 2012 under the KRA Act.

2.3 Committee Observations

Following comprehensive scrutiny of the Regulations, the Committee made the following observations –

1. **THAT, the Regulations were not accompanied by an Explanatory Memorandum as required by section 5A of the Statutory Instrument Act** hence it was not possible to analyse the extent of public participation or level of consultation conducted required under section 5 of the Statutory Instrument Act and the spirit of Article 10 and Article 118 of the Constitution.


The Committee was dissatisfied with the regulation-making authority's explanation that they did not find public participation necessary since the Regulations existed as the Kenya Revenue Authority (Tax Agents) Regulations, 2012 and considered it a transition from previous Kenya Revenue Act, which has since been repealed. The Committee, therefore, observed, that this was in contravention of the SI Act.

2. **THAT, the Regulations do not provide for a transitional mechanism/provision** and the status of existing tax agents. The Regulations are therefore defective in their drafting pursuant to section 13(h) of the SI Act.
3. **THAT, the enabling Section 112 of the Tax Procedures Act, 2015 empowers the Cabinet Secretary to prescribe offences and penalties when making Regulations. Regulation 10 thereof prescribes the offences and provides that a person, if found culpable on conviction, shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years. This contravenes section 24(5) of the Statutory Instruments Act which provides that a penalty for the breach of a statutory instrument shall not exceed twenty thousand shillings or such term of imprisonment not exceeding six months or both.**

The Committee also observed that the Regulations **do not provide for personal indemnity/insurance/compensation** to tax payers in the event where the tax agents act in contravention of the law leading to losses for the taxpayer(s).

3.0 RECOMMENDATION

The Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Tax Procedures (Tax Agents) Regulations, 2018 be annulled in entirety for the aforementioned reasons.


Signed.....

Date.....23/08/2018.....

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

ANNEXURES

- (i) Committee Minutes
- (ii) Sitings
- (iii) Adoption List
- (iv) Copy of the Tax Procedures (Tax Agents) Regulations, 2018
- (v) Correspondence

Delegated

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
TREASURY - NAIROBI
FAX NO. 330426
Telephone: 2252299
When replying please quote



TREASURY BUILDING
P.O. Box 30007
NAIROBI

Ref. ZZ TS/GP/30

3rd July, 2018

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

① DCS
② Had, take of the
phys register
and cause tabs
and to immediate
5/2/18
4/7/18

RE: LEGAL NOTICES NOS. 138 TO 144 OF 29th JUNE, 2018

Attached, please find the following Legal Notices:

1. Legal Notice No. 138 on the tax Procedures Act, 2015
2. Legal Notice No. 139 on the Retirement Benefits Act, 1997
3. Legal Notice No. 140 on the Public Finance Management Act
4. Legal Notice No. 141 on the Public Finance Management Act
5. Legal Notice No. 142 on the Proceeds of Crime and Anti-Money Laundering Act, 2009
6. Legal Notice No. 143 on the Air Passenger Service Charge Act
7. Legal Notice No. 144 on the Retirement Benefits Act

relating to 2018/2019 National Budget process.

The purpose of this letter is to request the Clerk of the National Assembly to lay the said Legal Notices before the National Assembly in order for the Cabinet Secretary, National Treasury to meet the requirements of the Statutory Instrument Act.

WANYAMBURA K. MWAMBIA, OGW
For: PRINCIPAL SECRETARY/NATIONAL TREASURY

③. Moses Lemuna CA
Kindly process.
4/7/18.

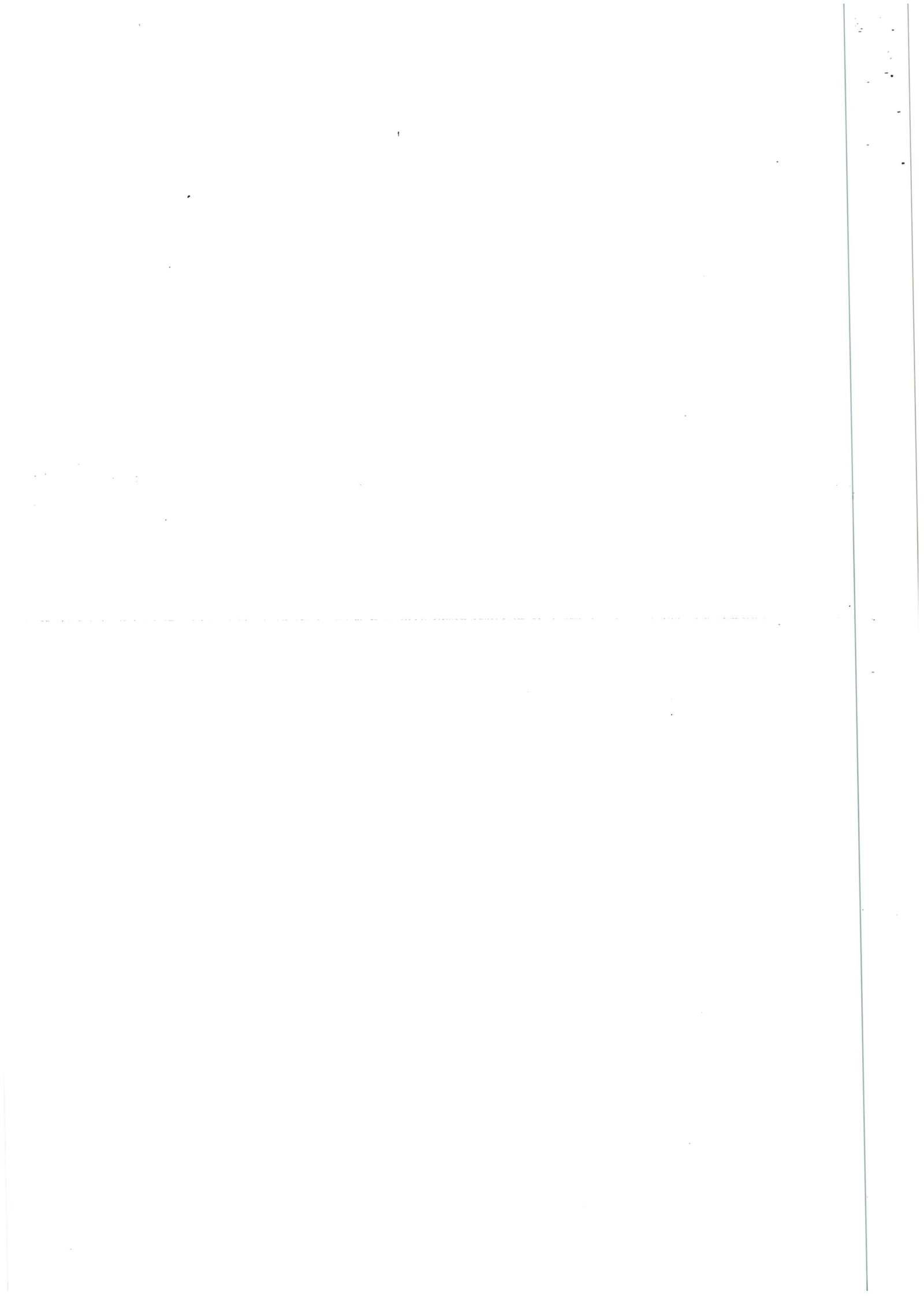
Copy to:

The Chairperson
Delegated Legislation Committee
National Assembly
NAIROBI

The Principal Secretary
National Treasury

Director, M&FA
National Treasury





SPECIAL ISSUE

Kenya Gazette Supplement No. 91

2049

29th June, 2018

(Legislative Supplement No. 45)

LEGAL NOTICE NO. 138

THE TAX PROCEDURES ACT, 2015

(No. 29 of 2015)

IN EXERCISE of the powers conferred by section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

1. These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations, 2018. Citation.

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

“Committee” means the Tax Agent Committee established under regulation 7;

“misconduct” includes making false tax declarations, aiding and abetting tax evasion and any conduct prohibited by any law relating to the collection of tax;

“practicing certificate” means a certificate issued to a person by a recognized professional association which permits that person to practice that profession;

“registration certificate” means the certificate issued by the Commissioner under regulation 3; and

“tax agent” means a person registered by the Commissioner as a tax agent under regulation 3.

3. (1) A person who wishes to act as a tax agent shall apply in writing to the Commissioner for registration. Registration of tax agent.

(2) An application made under subregulation (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

(3) The Commissioner may register a person as a tax agent if that person is tax compliant and—

- (a) is a member of the Institute of Certified Public Accountants of Kenya;
- (b) is an advocate of the High Court of Kenya and holds a current practicing certificate;
- (c) is a former tax administrator with at least ten years' experience in tax administration; or
- (d) is a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent.

(4) Where the Commissioner is satisfied that a person is qualified for registration as a tax agent, the Commissioner shall issue a certificate of registration in the prescribed form.

(5) These Regulations shall not apply to a non-resident who is temporarily in Kenya for the sole purpose of representing a client on tax matters.

4. The functions of a tax agent shall be to—

Functions of tax agents.

- (a) prepare and submit tax returns on behalf of a taxpayer;
- (b) liaise with the Kenya Revenue Authority on behalf of a taxpayer on matters relating to tax;
- (c) advise and represent a taxpayer in matters relating to tax before the Commissioner or the Tribunal established under the Tax Appeals Tribunal Act, 2013; and
- (d) deal with any other matters that relate to tax on behalf of a taxpayer.

Act No. 40 of 2013.

5. (1) The Commissioner shall maintain a register of tax agents which shall contain—

Register for tax agents.

- (a) the names of all tax agents;
- (b) the qualifications of the tax agents;
- (c) the address of the principal places of business of the tax agents and any other place where the tax agents may operate from; and
- (d) such other information as the Commissioner may consider necessary.

(2) A tax agent shall notify the Commissioner of any change in the information in the register within fourteen days of such change.

6. (1) A tax agent shall act in a professional manner in providing service to his or her clients to enable them to comply with the requirements of any tax law.

Conduct of tax agent.

2. Without prejudice to the foregoing, a tax agent shall—

- (a) comply with any notice served on the tax agent by the Commissioner within the period specified in the notice;
- (b) maintain a register containing the following details—
 - (i) the names of all the clients;
 - (ii) the date of engagement by each client;
 - (iii) the physical addresses, postal addresses and any other contact details of each client; and
 - (iv) information relating to the nature of the business that each client is engaged in; and
- (c) maintain proper records indicating—

- (i) the date when the last income tax return or specified notice was submitted to the Commissioner;
- (ii) the tax payable or paid; and
- (iii) such other particulars as the Commissioner may from time to time direct.

7. (1) The Cabinet Secretary shall, for the purpose of these Regulations, appoint by notice in the *Gazette*, a Tax Agent Committee which shall consider applications for registration of tax agents and investigate any allegations of misconduct made against tax agents.

Establishment of
the Tax Agents
Committee.

- (2) The Committee shall comprise of—
 - (a) a chairperson who shall be from the private sector with at least ten years' relevant experience and holds a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya;
 - (b) a representative of the Institute of Certified Public Accountants of Kenya;
 - (c) a representative of the Law Society of Kenya;
 - (d) three other persons who have at least five years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya; and
 - (e) a representative of the Commissioner, who shall be the secretary to the Committee.

(3) The members of the Committee shall serve for a term not exceeding three years and shall be eligible for re-appointment for one further term not exceeding three years.

(4) The quorum for a meeting of the Committee shall be the chairperson and two others members.

(5) The Chairperson shall preside at every meeting of the Committee at which the chairperson is present and in the absence of the Chairperson, the members present shall appoint one of their number to preside over the meeting.

(6) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may determine from time to time.

8. The office of the chairperson or a member of the Committee shall become vacant if the holder—

Vacancy.

- (a) resigns by notice in writing to the Cabinet Secretary;
- (b) is convicted of any offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to meet his or her tax obligations; or
- (e) fails to attend three consecutive meetings without notice to the chairperson or in case of the chairperson to the Commissioner.

9. (1) The Commissioner shall, upon receiving any allegation of misconduct against a tax agent, refer the matter to the Committee to investigate the allegation.

Investigation of
allegations of
misconduct.

(2) Where the complaint is against a member of a recognized professional association, the Committee may refer the matter to the association for investigation and determination in accordance with the code of conduct of that association.

(3) The Committee may recommend such disciplinary or similar action as it may consider necessary be taken against the tax agent in addition to the action taken by the association.

(4) Where the complaint is against a person who is not a member of a recognized professional association, the Committee shall give the tax agent an opportunity to be heard and permit the tax agent to inspect any relevant documents related to the allegation at least seven days before the date of the hearing.

(5) The Committee may, in the course of the investigations, hear such witnesses and receive such documentary evidence as may, in its opinion, assist in the investigation.

(6) The Committee shall, expeditiously, but not later than seven days after the conclusion of the investigation, submit a report to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent;
- (c) suspends the registration of the tax agent;
- (d) deregisters the tax agent; or
- (e) takes such other action that the Commissioner may consider appropriate.

(7) The Commissioner shall, within fourteen days of receiving the report of the Committee, take such action as may be appropriate.

10. Any person who—

Offences.

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into the register maintained for the purposes of these Regulations, or any copy thereof;
- (b) fraudulently procures or attempts to procure, registration as a tax agent;
- (c) knowingly and willfully makes any statement which is false or which is misleading, with a view to gaining any advantage, concession or privilege under these Regulations; or
- (d) operates as a tax agent without being registered,

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

Dated the 14th June, 2018.

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

LEGAL NOTICE NO. 139

THE RETIREMENT BENEFITS ACT, 1997

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997 the Cabinet Secretary for the National Treasury and Planning makes the following Regulations-

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018. Citation.

2. Regulation 3 of the Retirement Benefits (Occupational Retirement Benefits Schemes), 2000 (in these Regulations referred to as the "principal Regulations") is amended by inserting the following definition in its proper alphabetical sequence— L.N. 119/2000.

"medical fund" means a fund into which all contributions, investment earnings, income and all other moneys payable under the scheme rules or the provisions of this Act and subsidiary Regulations shall be paid for the purposes of accessing medical benefits in retirement.

3. Regulation 8 of the principal Regulations is amended by adding the following new paragraph immediately after paragraph (4)—

(5) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

4. Regulation 25 of the principal Regulations is amended—

(a) by deleting paragraph (a) of the provision to paragraph (1) and substituting therefor the following new paragraph—

(a) subject to the amount not exceeding ten percent of the total accrued benefits transferred to a medical fund, not more than one-quarter of the remaining retirement benefits may be commuted in a scheme where members do not make contributions and not more than one-third of the remaining retirement benefits may be commuted in a scheme where members make contributions;

(b) by deleting paragraph (6) and substituting therefor the following paragraph—

(6) The scheme rules may provide for the payment of retirement benefit by way of an income draw down, as an alternative or in addition to the purchase of annuity for members at retirement age:

Provided that the scheme members shall take a minimum period of ten years.

5. Regulation 39 of the principal Regulations is amended—

- (a) in paragraph (1), by deleting the expression “three months” and substituting therefor the expression “four months”; and
- (b) in paragraph (3), by inserting the words “less the amount of the medical fund” at the end of subparagraph (a) of the proviso.

Dated the 14th June, 2018.

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

LEGAL NOTICE NO. 140

THE PUBLIC FINANCE MANAGEMENT ACT
(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012 the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS, 2018

1. These Regulations may be cited as the Public Finance Management (Tourism Promotion Fund) Regulations, 2018.

Citation.

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

Interpretation.

“Board” means the Oversight Board established under regulation 17;

“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;

“Fund” means the Tourism Promotion Fund established under regulation 3 of these Regulations;

“Officer Administering the Fund” means the Principal Secretary for the time being responsible for matters relating to tourism;

“operational and maintenance expenses” means moneys included in the approved annual budget of the Fund dedicated to meeting the routine administrative expenses of the Secretariat;

“plugging projects” means projects which support the development, promotion and branding of tourism in Kenya;

“tourism events” means natural phenomena or human scheduled activity which attract visitors to a particular area as organizers, participants, spectators or service providers to support the activity or a combination of several purpose of engagement, including wildebeest migration, observation of eclipse, exhibition, conferences, sporting events, cultural festivals and dances;

“tourism implementing agency” means a government agency involved in the development, promotion and branding of tourism in Kenya;

“tourism niche product” means an attraction, good or service of special appeal and of specific interest to a particular market segment;

“tourism product” means an attraction, good or service which contributes to the total visitor or tourist experience in a destination, including wildlife, culture, rivers, beaches, historical sites, museums, hotels and artifacts.

3. There is established a fund to be known as the Tourism Promotion Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act. Establishment of the Fund.

4. The initial capital of the Fund shall be 200 million shillings appropriated by Parliament in the financial year 2018/19. Capital of the Fund.

5. (1) The object and purpose of the Fund shall be to provide funds to support development, promotion and branding of tourism sector. Object and purpose.

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

- (a) financing development, promotion and branding programmes and initiatives in relation to tourism products, including tourism niche products and tourism events;
- (b) financing development, promotion and branding of Kenya in specific local, regional and international market segments;
- (c) financing tourism data capture, analysis and dissemination of the same and any other related research which may include deployment of technology based applications;
- (d) financing development of tourism facilities and establishments in areas where the private sector is unable or unwilling to develop, but with a high potential for tourism promotion and branding;
- (e) co-financing of tourism promotion projects with the county governments on the basis of an agreed ratio of matching grants;
- (f) funding programmes and initiatives for tourism safety and security geared towards development, promotion and branding of tourism sector;
- (g) financing development of innovations and inventions which promote tourism development, promotion and branding;
- (h) funding of plugging projects which contribute to development, promotion and branding of tourism sector;
- (i) financing programmes and initiatives geared towards tourism intelligence and information gathering for purposes of developing, promoting and branding tourism in Kenya; and
- (j) standard development and capacity building in the tourism sector.

6. The Fund shall consist of—
- Sources of funds.
- (a) proceeds realised under section 3 of the Air Passengers Service Charge Act; Cap. 475.
- (b) moneys appropriated by the National Assembly for the purpose of the Fund;
- (c) income from investments of any surplus funds in the Fund;
- (d) interest accruing to the Fund;
- (e) grants, donations or other bequests made to the Fund;
- (f) moneys paid into the Fund from any other source as may from time to time be approved by the Cabinet Secretary; and
- (g) any other moneys as may be provided for in an Act of Parliament.
7. (1) There shall be paid out of the Fund monies in respect of any expenses incurred in pursuant of the objects and purposes for which the Fund is established. Payment out of the Fund.
- (2) The expenditure incurred out of the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Officer Administering the Fund, and approved by the Board at the beginning of the financial year to which they relate.
- (3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.
8. The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established. Retention of funds.
9. A tourism implementing agency shall be eligible to apply for funding from the Fund if— Funding eligibility criteria.
- (a) in the case of a state corporation or a government agency—
- (i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium term plan approved by the governing body of the state corporation or agency;
- (ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
- (iii) meets any other criteria set out by the Board.
- (b) in case of a Ministry or a State Department, that Ministry or State Department —
- (i) has an annual work programme aligned to the strategic plan of the Ministry or state department and the medium term plan approved by the Cabinet Secretary responsible for that Ministry or State Department;

(ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions; and

(iii) meets any other criteria set out by the Board.

10. (1) The Officer Administering the Fund shall by the 30th August of each year issue a budget circular to the eligible persons indicating—

Procedure for funding.

- (a) the ceilings for funding each objects of the Fund;
- (b) priority programmes, projects and activities to be funded in that financial year; and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 9 shall at least, six months before the commencement of a financial year, apply to the Officer Administering the Fund in such a manner as may be specified by the Board.

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

- (a) in case of a state corporation or government agency—
 - (i) the minutes of a properly constituted meeting of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund;
 - (ii) an annual work programme aligned to the strategic plan of the state corporation or government agency approved by the governing body of that corporation or agency and the Medium Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency;
 - (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) a statutory declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.

(c) in the case of a Ministry or State Department –

- (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan;
- (ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity;
- (iii) where it is an infrastructure development project, the project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable;
- (iv) an accounting officers' declaration of programmes funded through other sources, if any;
- (v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channeled; and
- (vi) any other additional information as may be required by the Board.

(3) A maximum of ten per centum (10%) of the approved budget for each financial year shall be allocated annually by the Board, with the approval of the Cabinet Secretary for the time being responsible for matters relating to tourism based on the Medium Term Plan of that Ministry and the Cabinet Secretary for the National Treasury, to implement strategic interventions, programmes and initiatives through a tourism implementing agency.

11. (1) The funds shall only be disbursed if—

- (a) the disbursement is approved and recorded in minutes of the Board; and
- (b) the disbursement is to meet the expenses related to the objects and purpose of the Fund.

(2) The Board may set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(3) Moneys may additionally be disbursed out of the Fund where such disbursements—

- (a) relate to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and

Conditions for disbursements of funds.

- (b) have been approved by the Officer Administering the Fund and submitted to the Board for further approval.

(4) For purposes of paragraph (3) of this regulation, a supplementary budget shall be prepared by the Officer Administering the Fund and approved in accordance with the provisions of regulation 10, provided disbursement under the supplementary budget complies with the requirements of these Regulations.

12. (1) A recipient of the funds shall—

Obligations of the recipient of funds.

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

(2) A recipient of the funds shall return any unutilized funds disbursed in accordance with these Regulations where—

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

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

(4) A recipient of the funds who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until that person has fully complied with the provisions of these Regulations.

13. A tourism implementing agency shall only request for payments from the Fund where—

Request for payment from the Fund.

- (a) the project to be financed is procured in accordance with the Public Procurement and Asset Disposal Act, 2015;
 (b) the project to be financed is included in the approved estimates of revenue and expenditure for the tourism implementing agency; and
 (c) the requirements of regulation 27 are met.

No. 33 of 2015.

14. The Officer Administering the Fund may withhold payments due and owing to a tourism implementing agency where—

Withholding of payments.

- (a) that tourism implementing agency fails to comply with the provisions of regulation 12;
 (b) the Officer Administering the Fund is of the opinion that the provisions of these Regulations have not been complied with; or

- (c) a tourism implementing agency provides information justifying the proposed withholding with approval of the agency governing body, and the Board approves the withholding.

15. The Board, with the prior approval of the Cabinet Secretary for the time being responsible for matters relating to tourism and the Cabinet Secretary to the National Treasury, may—

Imposition of sanctions.

- (a) impose such penalties, including the suspension of funding allocations, as it may direct the tourism implementing agencies which fail to comply with any of the provisions under these Regulations; or
- (b) take such remedial, supplementary or alternative measures to ensure the performance of the functions of tourism implementing agencies which persistently fail to discharge their functions under these Regulations.

16. (1) Applications for payment out of the Fund shall be made by a tourism implementing agency in a format specified by the Board at least twenty-one (21) days before the due date.

Applications for payments out of the fund.

(2) Any applications for payment made under paragraph (1) of this regulation shall be supported by documents required under these Regulations which shall include—

- (a) the name and address of the payee (tourism implementing agency);
- (b) the bank account details of the payee;
- (c) specific project to be financed; and
- (d) any other additional information as may be deemed necessary by the tourism implementing agency.

(3) Any application under these Regulations shall be signed by an accounting officer or the chief executive officer of a tourism implementing agency or an officer delegated by him or her, in writing.

17. (1) There is established a board to be known as Oversight Board for the Fund which shall consist of—

Establishment and composition of the Board.

- (a) the Cabinet Secretary responsible for matters relating to tourism, who shall be the chairperson of the Board, or in his or her absence, the Principal Secretary responsible for matters relating to tourism;
- (b) the Principal Secretary responsible for matters relating to tourism;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Principal Secretary responsible for matters relating to Transport;
- (e) the Principal Secretary responsible for matters relating to Culture;

- (f) the Principal Secretary responsible for matters relating to wildlife;
 - (g) the Principal Secretary responsible for matters relating to Internal Security;
 - (h) two persons of opposite gender appointed by the Cabinet Secretary responsible for matters relating to tourism in accordance with Article 27 of the Constitution.
- (2) A person shall not be appointed under paragraph (1) (h) of this regulation, unless that—
- (a) holds a university degree recognized in Kenya;
 - (b) has not less than fifteen years' experience in the relevant field; and
 - (c) meets the requirements of Chapter Six of the Constitution.
- (3) A person appointed under paragraph (1)(h) of this regulation shall serve for a period of three (3) years, and the period may be renewed for a further final term of three (3) years.

18. The functions of the Board shall be to—

Functions of the Board.

- (a) advise the Cabinet Secretary on the funding requirements of the Fund;
- (b) review and adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for matters relating to tourism for concurrence and onward transmission to the Cabinet Secretary for approval;
- (c) determine the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (d) ensure that the annual estimates of revenue and expenditure for the Fund include retention funds for the preceding financial year which shall be revoked;
- (e) ensure that only projects included in the tourism implementing agency annual programme are promoted for funding under these Regulations;
- (f) advise the Cabinet Secretary on amounts and timing for the fund transfers into the Fund;
- (g) approve and review the investment of surplus funds from the Fund;
- (h) advise the Cabinet Secretary on any additional sources of funds for the Fund;
- (i) approve the financial statements prepared by the Officer Administering the Fund before submission to the Auditor-General; and

- (j) approve the non-financial reports of the Fund before submitting them to the Cabinet Secretary responsible for tourism for onward transmission to the National Treasury.

19. (1) The Board shall, through a competitive recruitment process, identify and shortlist three successful persons in order of merit and forward the names to the Cabinet Secretary for the time being responsible for matters relating to tourism to appoint one of them to be the Chief Executive Officer of the Fund.

Appointment of
chief executive
officer.

(2) A person shall not be qualified for appointment as the chief executive officer under paragraph (1) unless that person—

- (a) holds at least a degree from a university recognized in Kenya in the field of tourism, wildlife, economics, finance, natural resources or any other relevant field;
- (b) has at least ten years practical experience in senior management capacity; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The chief executive officer of the Fund shall hold office for a term of three years, but shall be eligible for re-appointment for one further term of three years.

(4) The chief executive officer shall be the Secretary to the Board and shall be responsible for the day to day running of the Fund including the staff of the secretariat of the Fund.

20. (1) The Principal Secretary responsible for matters relating to tourism shall be the Officer Administering the Fund.

Officer
Administering the
Fund.

(2) The functions of the Officer Administering the Fund shall be to—

- (a) supervise and control the administration of the Fund based on a five year tourism investment programme approved by the Cabinet Secretary for tourism and the Cabinet Secretary for the National Treasury;
- (b) recommend the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (c) prepare estimates of annual revenue and expenditure of the Fund relating to its purpose and object and operational and maintenance expenses and submit it to the Board for approval;
- (d) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (e) advise and consult the Board on matters relating to the administration of the Fund;
- (f) co-ordinate monitoring and evaluation of tourism development, promotion and branding projects financed from the Fund;

- (g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
- (h) keep proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund and submit them to the Board;
- (i) keep custody of the Funds' assets, equipment and properties under the Fund;
- (j) prepare financial and non-financial performance report of the Fund and submit it to the Board for approval, and upon approval transmit a copy to the National Treasury and Ministry for matters relating to tourism;
- (k) prepare the annual financial statements and submit them to the Board for approval before submission to the Auditor-General with a copy to the National Treasury and Ministry for matters relating to tourism;
- (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General; and
- (m) undertake any other duty as the Board may assign through resolutions.

(3) When discharging the functions under paragraph (2) of this regulation, the Officer Administering the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

21. The Officer Administering the Fund shall have power to—

- (a) access any project related data he or she may need from tourism implementing agency in furtherance of his or her functions;
- (b) call for any additional information with respect to requests for payments out of the Fund; and
- (c) cause for a monitoring and evaluation exercise to be done to a tourism implementing agency projects funded from the Fund, and with the approval of the Board.

22. (1) The Board shall designate a secretariat to support the operations of the Fund which shall be headed by the Chief Executive Officer.

(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to

Powers of Officer
Administering the
Fund.

Secretariat
support for
Officer
Administering the
Fund.

tourism may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations.

23. (1) The Officer Administering the Fund shall cause an account in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with section 28 of the Act and any Regulations made thereunder.

Accounts of the Fund.

(2) All monies payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's accounts shall be operated by the Officer Administering the Fund and two other persons nominated by the Cabinet Secretary from the Fund's secretariat.

(4) The Officer Administering the Fund may open and maintain other accounts for the following purposes—

- (a) payments for development, promotion and branding of tourism sector;
- (b) payments of operational and maintenance expenses; and
- (c) receiving receipts of the Fund and unutilized funds by tourism implementing agencies.

24. The Officer Administering the Fund shall ensure the accounts of the Fund are not overdrawn.

Overdrawn accounts.

25. (1) The Board shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

Advances to the Board.

(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Board and the Fund, the Cabinet Secretary to the National Treasury may, with the approval of Parliament, make advances to the Board and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary to the National Treasury may determine:

Provided that any such advance shall be repaid from the income of the Fund.

26. The Board may with the consent of the Cabinet Secretary to the National Treasury and the Cabinet Secretary responsible for matters relating to tourism, invest any of its surplus funds in Government securities.

Investments of the funds.

27. The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable.

Financial and procurement Regulations.

28. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be

Review of performance of the Fund.

conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet and Parliament for approval.

29. (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year. Annual estimates.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) moneys allocated to tourism implementing agencies under these Regulations;
- (c) monies for the administration expenses of the Fund;
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Board, where applicable;
- (e) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
- (f) the proper maintenance of the assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and thereafter, the Board shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

30. (1) The Officer Administering the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit it to the Board for approval. Quarterly reports.

(2) Upon approval, under paragraph (1), the Officer Administering the Fund shall submit the report to the National Treasury and Ministry responsible for matters relating to tourism.

31. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund. Accounts and audit.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and

(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The financial statements prepared under paragraph (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.

(4) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

(5) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.

No. 34 of 2015.

32. (1) The administrative expenses of the Fund shall not exceed three per centum of the approved budget of each financial year.

Administration expenses.

(2) Despite the provisions of paragraph (1), the Board may, with the concurrence of the Cabinet Secretary for the time being responsible for matters relating to tourism, recommend increase of the administrative expenses from three per centum to five per centum where there are justifiable reasons to the Cabinet Secretary for approval for that particular financial year.

33. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

34. (1) The Cabinet Secretary may wind-up the Fund with the approval of the National Assembly where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created.

Winding-up of the Fund.

(2) On winding up of the Fund —

- (a) the officer Administering the Fund shall call on the tourism implementing agencies to submit any valid outstanding obligations and commitments for payment;
- (b) the Officer Administering the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to tourism.

(3) Within three months upon the decision to wind up the Fund, the Officer Administering the Fund shall prepare final financial and

non-financial statements of the Fund and submit them to the Board for approval.

(4) Upon approval under paragraph (3), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

(5) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

Dated the 14th June, 2018.

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

LEGAL NOTICE NO. 141

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Public Finance Management (National Government) (Amendment) Regulations, 2018.

2. The Public Finance Management (National Government) Regulations, 2015 are amended in regulation 219 by deleting paragraph (2) and inserting the following new paragraphs immediately after paragraph (1)—

L.N. 34/2015.

(2) A regulatory authority established by an Act of Parliament and referred to under regulation 211 (4) shall remit to the Collector ninety per centum of its surplus funds not later than thirty days after it is reported in the audited financial statements after the end of each financial year.

(2A) For the purpose of this regulation, "Collector" means the Commissioner General appointed under section 11 of the Kenya Revenue Authority Act, 1995.

No. 2 of 1995.

Dated the 14th June, 2018.

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



LEGAL NOTICE NO. 142

THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING ACT, 2009

(No. 9 of 2009)

IN EXERCISE of the powers conferred by section 134 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations-

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
(AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Amendment) Regulations, 2018.

Citation.

2. The Proceeds of Crime and Anti-Money Laundering Regulations, 2013 (in these Regulations referred to as the "principal Regulations") are amended by inserting the following new regulation immediately after regulation 2 -

L.N. 59/2013.

Application.

2A. These Regulations shall apply to all preventive measures that apply to anti-money laundering activities including measures for combating terrorism financing.

3. The principal Regulations are amended by inserting the following new regulation immediately after regulation 7 -

Policies and procedures.

7A. (1) A reporting institution shall have policies and procedures to address any money laundering or terrorism financing risks associated with non-face-to-face business relationships or transactions.

(2) The policies and procedures referred to in paragraph (1) shall apply when establishing customer relationships and when conducting on-going due diligence.

Dated the 14th June, 2018.

HENRY ROTICH,

Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 143

THE AIR PASSENGER SERVICE CHARGE ACT

(Cap. 475)

IN EXERCISE of the powers conferred by section 3(3) of the Air Passenger Service Charge Act, the Cabinet Secretary for the National Treasury and Planning makes the following Order-

THE AIR PASSENGER SERVICE CHARGE ACT
(APPORTIONMENT) ORDER 2018

1. This Order may be referred to as the Air Passenger Service Charge (Apportionment) Order 2018.

2. The proceeds of the charge collected under section 3(1) of the Act shall be apportioned among the Kenya Airports Authority, the Kenya Civil Aviation Authority and the Tourism Promotion Fund as follows -

- (a) in the case of the charge collected under paragraph (a) -
 - (i) sixty percent thereof to the Kenya Airports Authority,
 - (ii) twenty percent to the Kenya Civil Aviation Authority and
 - (iii) twenty percent to the Tourism Promotion Fund; and
- (b) in the case of the charge collected under paragraph (b) -
 - (i) fifty percent thereof to the Kenya Airports Authority;
 - (ii) thirty percent to the Kenya Civil Aviation Authority, and
 - (iii) twenty percent to the Tourism Promotion Fund.

Dated the 14th June, 2018.

HENRY ROTICH,

Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE No. 144

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997 the Cabinet Secretary for the National Treasury and Planning makes the following Regulations---

THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2018.

2. Regulation 9 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 (in these Regulations referred to as the "principal Regulations") is amended by adding the following new paragraph immediately after paragraph (4)--

(6) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

Citation.

L.N. 118/2000.

3. Regulation 15 of the principal Regulations is amended by inserting the following paragraphs immediately after paragraph (1)–

(1A) A scheme shall allow for additional voluntary contributions by a member in respect of funding of a medical fund to be accessed at retirement:

Provided that the funds shall be segregated and invested as per the investment policy of the fund for this purpose.

(1B) The scheme rules shall provide that a member may transfer a portion of the member's benefits to a medical cover provider where the member has been unable to build a sufficient post-retirement medical fund from additional contributions.

4. Regulation 32 of the principal Regulations is amended–

- (a) in paragraph (1), by deleting the expression “six months” and substituting therefor the expression “four months” and
- (b) in paragraph (3), by inserting the words “less the amount of the medical fund” at the end of subparagraph (a) of the proviso.

Dated the 14th June, 2018.

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

BACKGROUND AND EXPLANATORY NOTES FOR THE LEGAL NOTICES – 2018/19 BUDGET

(A) LEGAL NOTICE NO. 138

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

1. Background:

Guidelines for registration and licensing of tax agents were provided for under Section 24A of the Kenya Revenue Authority (KRA) Act, as the *Kenya Revenue Authority (Tax Agents) Regulations, 2012*. The Tax Procedures Act (TPA) which was enacted in 2015 in order to consolidate tax procedures and administration processes repealed the said section of the KRA Act. This has brought ambiguity regarding the validity of the Tax Agents Regulations.

However, Tax Procedures Act (Section 19(1)) provides for licensing of tax agents. Further, (Section 20(3) provided that regulations under the TPA may be issued to provide for guidelines for determining fitness of a person to be a tax agent.

The Tax Procedures (Tax Agents) Regulations, 2018 seeks to transfer and anchor the Tax Agents Regulation under the TPA. These Regulations were initially issued in the year 2012 under the KRA Act.

2. Explanatory to the Regulations

Regulation 1: Provides for citation of the Regulations after approval and publication.

Regulation 2: The regulation provides for definition of terms used in these Regulations.

Regulation 3: Provides the procedure for the registration of tax agents and the required qualifications.

Regulation 4: States the responsibilities of a tax agent while acting on behalf of a tax payer.

Regulation 5: Commits the Commissioner to keep records of all the registered tax agents, their qualifications and locations.

Regulation 6: Provides for professional code of conduct of tax agents in the course of carrying out their responsibilities and keeping of their clients records.

Regulation 7: Provides for the establishment of the tax agents committee, its composition, functions, terms of service and quorum.

Regulation 8: States the conditions under which the office of the Chairperson or member of the committee becomes vacant.

Regulation 9: Provides procedures for investigation of allegations of misconduct against a tax agent and the sanctions thereof.

Regulation 10: This regulation provides offences under these Regulations.

3. Public Participation

These regulations do not require public participation since it is a clean up in addition to issuing it under the Tax Procedures Act, 2015 which consolidated all procedures on taxation. The Regulations does not impose additional burden or requirement to taxpayers.

(B) LEGAL NOTICE NO. 139

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEME) (AMENDMENT) REGULATIONS, 2018

1. Background:

The Regulations seek to amend the principal Regulations to define a medical fund, clarifies matters relating to conflict of interest, levy payment due date, amount to be transferred to post medical fund on retirement, commutation of benefits, and giving retirement benefits members an opportunity to use either an annuity or income draw down, or both at the same time.

This will enable the retirees to transfer part of their retirement income into the medical scheme for their medical cover and contribute to the achievement of one of the Big Four Agenda.

2. Explanatory to the Regulations

Regulation 1: Provides for citation of the regulations after approval and publication.

Regulation 2: The regulation proposes to define the term “medical fund” as monies payable for purposes of accessing medical benefits in retirement.

Regulation 3: The regulation proposes to prohibit scheme trustees who are members of various professions and engaged in business, from offering services to the scheme at a cost. This will remove conflict of interest and enhance good governance of the schemes.

Regulation 4: The regulation proposes to allow members of a scheme to increase the amount they can utilize to secure post-retirement medical cover by transferring a limited portion of up to 10% of their accrued benefits to a medical cover provider, at the time of retirement, before the lump sum payment is made.

Further, regulation 25 of the principal Regulations allows a member of a scheme to take either an income drawn down or an annuity. In order to promote diversification, the proposed regulation 4 seeks to provide an option for a hybrid in the choices available by availing the option to access both products in order to enjoy the protection of annuity while enjoying the flexibility of an income drawdown concurrently.

Regulation 5: The Public Sector Accounting Standard Board (PSASB) has prescribed accrual basis IPSAS for all MDAs who were previously reporting under IFRS. In order to bring administrative efficiency in determining the Levy payable to RBA, this regulation seeks to harmonize the payment of the RBA levy with the PSASB requirements by allowing the levy to be paid four months after the end of the financial year instead of the current three months.

3. Public Participation

The proposed amendments were subjected to public participation during the month of February 2018

(C) LEGAL NOTICE NO. 140

**THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND)
REGULATIONS, 2018**

1. The Purpose of the Regulations

The purpose of these Regulations is to:

- (i) specify the sources, object and purpose of the Fund;
- (ii) provide guidance on the administration and management of the Fund;
- (iii) establish the Tourism Promotion Fund Governance structure, which includes the Board to advise the Cabinet Secretary on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- (iv) to set out the funding eligibility criteria to various categories of tourism implementing agencies, procedures for funding and conditions for disbursement from the Fund to eligible institutions;
- (v) set out obligations of the recipients of the funds from the Fund;
- (vi) give powers to the Board to impose sanctions to tourism implementing agencies in order to promote accountability and prudent use of public resources;
- (vii) review of the performance of the Fund;
- (viii) provide for the withdrawals from the Fund; and
- (ix) provide for the winding up of the Fund.

2. The Legislative Context

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

In addition, the National Assembly amended the Air Passenger Service Charge Act in 2016 to provide for additional charge of US\$ 10 for foreign air travels and Kshs. 100/= for domestic air travels per passenger respectively. This additional charge was to be channeled towards tourism development, promotion and branding. Accordingly,

the proposed Fund is made to facilitate receipt of the proceeds intended for the development, promotion and branding of the tourism sector to support its rejuvenation.

The National Treasury also complied with the provisions of the Statutory Instruments Act while preparing these Regulations.

3. Policy Background.

Over the recent past, the Government has been supporting reforms for expansion and growth in the tourism sector. While these reforms have recorded significant socio-economic impact in the sector, the sector continues to face various challenges including:-

- (i) lack of a comprehensive approach to support the tourism sector;
- (ii) inadequate support to the targeted tourism sectors; and
- (iii) lack of a comprehensive approach to support key players in the tourism sector.

The Government therefore proposes the establishment of Tourism Promotion Fund in order to provide complimentary funding to the tourism sector over and above the normal funding from the Exchequer. This will ensure sustainable funding for development, promotion and branding of the tourism sector and continued growth of the sector and the economy at large. This will enhance creation of job opportunities, revenue generation and general economic development in Kenya.

The establishment of the Fund, therefore, will achieve the following outcomes:-

- (i) Enhanced international tourist arrivals;
- (ii) Enhanced tourism earnings realized from continued recovery and sustained growth of the sector;
- (iii) Expansion of direct and indirect employment opportunities;
- (iv) Expansion of agriculture to support the hotel industry especially agro-processing , horticulture and auxiliary services to the hotel industry;
- (v) Sustained conservation of national parks, reserves, museums, heritage sites and other tourist attraction sites;
- (vi) Sustained infrastructure development to support the tourism sector especially road, ports, water and energy sectors;

- (vii) Growth of the manufacturing and housing sectors due to increased international tourism arrivals leading to increased demand for manufactured goods as well as accommodation facilities;
- (viii) Diversification of tourism products, services and tourist source markets;
- (ix) Enhanced Kenya's global competitiveness as a preferred long-haul tourist destination; and
- (x) Promote diversity and cohesion through sustained growth in the tourism sector.

The Government therefore intends that Tourism promotion Fund be established to support development, promotion and branding of the tourism sector to increase earnings from the sector, create employment and stimulate economic growth in the country.

4. Guidance

The National Treasury will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the process of accessing the Tourism Promotion Fund resources, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

5. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the rejuvenated growth of the tourism sector, the jobs created as a result of well financed tourism sector and increased international arrivals).

6. Review of the performance of the Tourism Promotion Fund.

The National Treasury shall monitor the application of the Tourism Promotion Fund resources. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, the Fund Secretariat will also carry out regular monitoring and evaluation of the specific projects funded through the Tourism Promotion Fund.

7. Public Participation

Extensive consultations were done while preparing the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders' consulted are Ministry of Tourism and Wildlife, relevant Accounting Officers of national and county governments, as well as international experts among others.

Different stakeholders had different views especially on the mode of access to the Tourism Promotion Fund. The National Government therefore made a deliberate choice to finance existing institutions to leverage of existing capacities, ensure prudent use of public resources and accountability of the resources under this Fund. This will give flexibility to the Fund to ensure maximum impact in rejuvenating the tourism sector in Kenya.

(D) LEGAL NOTICE NO. 141

**THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT)
(AMENDMENT) REGULATIONS, 2018**

1. Background

The Kenya Gazette Supplement No 32 (Legislative Supplement No. 17) issued Legal Notice No. 34 of 20th March 2015, which provides for exemption of Regulatory Authorities under the Public Finance Management Regulations. Despite the exemption, these Authorities are required to remit 90% of their surpluses to the consolidated fund under regulation 219(2) of the principal Regulations. However, there is currently no enabling legal provision for KRA to enforce the collection.

These regulations seek to amend the principal Regulations in order to provide for collection of surplus from the Regulatory Authorities by KRA.

2. Explanatory to the Regulations

Regulation 1: Provides for citation of the regulations after approval and publication.

Regulation 2: This regulation seeks to amend regulation 219 of the principal Regulations in order to provide a legal provision that will enable KRA to collect 90% of the surplus as an exchequer revenue not later than thirty days after it is reported in the audited financial statements after the end of each financial year.

The provision further seeks to clarify that the collection of the surplus will be the responsibility of KRA. This will ensure timely payment of surplus funds to the Exchequer.

3. Public Participation

This amendment does not require public participation since the KRA administratively is already collecting the surplus from the Regulatory Authorities. The proposed amendment will not impose additional burden on the Regulatory Authorities.

(E) LEGAL NOTICE NO. 142

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
(AMENDMENT) REGULATIONS, 2018**

1. Background

These regulations seek to amend the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 in order to expand the scope of the Regulations to include combating terrorism financing.

The proposal will ensure that reporting institutions:

- (i) Have policies in place or take such other measures as may be needed to prevent the misuse of new technological development in money laundering and terrorism financing schemes.
- (ii) Have in place policies and procedures to address any specific risks associated with non-face to face business relationships or transactions.

2. Explanatory Notes to the Regulations

Regulation 1: Provides for citation of the Regulations after approval and publication.

Regulation 2: Introduces a new regulation 2A to provide that the principal Regulations will apply to all anti-money laundering activities as well as measures to combat terrorism financing. The proposed amendment will expand the scope of the preventive measures to also include measures for combating terrorism financing.

Regulation 3: Introduces a new regulation 7A to the principal Regulations. This regulation is meant to ensure that reporting institutions establish procedures as well as policies to address any money laundering or terrorism financing risks associated with non-face-to-face business relationships and transactions.

3. Public Participation

The current regulations provide for anti-money laundering measures but do not include measures for anti-terrorism financing. Considering that this is not a major amendment, it may not be necessary to subject the same to public participation.

(F) LEGAL NOTICE NO. 143

**THE AIR PASSENGER SERVICE CHARGE ACT (APPORTIONMENT)
ORDER 2018**

1. The Purpose of the Order.

The purpose of this Order is to apportion the proceeds of the charge collected under Section 3(1) of the Air Passenger Service Charge Act among them:

- (i) Kenya Airports Authority;
- (ii) Kenya Civil Aviation Authority; and
- (iii) Tourism Promotion Fund;

2. The Legislative Context

The National Assembly amended the Air Passenger Service Charge Act in 2016 to provide for additional charge of US\$ 10 for foreign air travels and Kshs. 100/= for domestic air travels per passenger respectively. However, the Regulations were not amended to be in tandem with the amended law. Towards this end, the Tourism Promotion Fund could not receive the additional levy as envisaged when the law was being amended to support rejuvenation of the tourism sector. This Order is intended to address this gap.

3. Policy Background.

The National Assembly delegated duty to make Regulations on Air Passenger Service Charge Act to the Cabinet Secretary. Towards this end, due to the numerous adverse security alerts by foreign Governments, the growth in the tourism sector has declined over time. In 2016, the growth of the tourism sector reached its lowest level and therefore Government made a deliberate effort to rejuvenate the Sector. This required additional resources over and above the normal budgetary allocations.

Accordingly, the National Government decided to levy an additional charge of US \$ 10 for foreign air travels and 100 shillings for domestic air travels per passenger. The total levy collected under this Act, will then be apportioned among three institutions namely, Kenya Airports Authority, Kenya Civil Aviation Authority

and Tourism Promotion Fund. These institutions are involved in the growth of both domestic and foreign air passengers.

4. Guidance

The National Treasury will sensitize stakeholders including Parliament, relevant accounting officers of national governments and the general public, on the process of apportioning the proceeds of the charge collected under Section 3 (1) of the Act, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

5. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the sharing of the proceeds to include the tourism sector, which had been excluded despite the increase of the charge to finance programmes and initiatives supportive of rejuvenating the tourism sector, hence creating direct and indirect employment in Kenya as well as the increase in foreign exchange reserves due to increased foreign tourists jetting in the country).

6. Review of the Apportionment of the proceeds collected under Section 3 (1) of the Act.

The National Treasury shall monitor the application of the resources emanating from this charge. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, each recipient institution of this charge will also carry out regular monitoring and evaluation of the specific projects funded through the proceeds of the Air Passenger Service Charge Act.

7. Public Participation

Extensive consultations were done while preparing the Air Passenger Service Charge (Amendment) Bill, 2016 and the Air Passenger Service Charge Act (Apportionment) Order, 2018 with key stakeholders and their input taken into account before finalization of this Order. Some of the key stakeholders' consulted

are Ministry of Tourism, Ministry of Transport, Infrastructure, Housing and Urban Development, relevant Accounting Officers of national government as well as international experts among others.

Different stakeholders had different views especially on the percentages of apportionment among the three institutions. The National Government therefore made a deliberate choice to apportion based on each institutions mandate and kind of projects to be implemented by each recipient institution of the proceeds of the charge collected under Section 3 (1) of the Act. The apportionments were pegged to percentages as opposed to absolute amounts. This will give flexibility to each institution as the economy expands due to increased domestic and foreign air travels.

(G) LEGAL NOTICE NO. 144

THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEME) (AMENDMENT) REGULATIONS, 2018

1. Background:

The regulations seek to harmonize the provisions of Occupational and Individual Retirement Benefits Schemes in terms of levy payment, conflict of interest and contributions to post medical retirement fund.

This will enable the Retirement Benefits (Individual Retirement Benefits Scheme) Regulations, 1997 to provide for post-retirement medical benefit to allow retirees to transfer part of their retirement income into the medical scheme for their medical cover and contribute to the achievement of one of the Big Four Agenda.

2. Explanatory to the Regulations

Regulation 1: Provides for citation of the regulations after approval and publication.

Regulation 2: The regulation proposes to prohibit scheme trustees who are members of various professions and engaged in business, from offering services to the scheme at a cost. This will remove conflict of interest and enhance good governance of the schemes.

Regulation 3: The regulation proposes to allow members of an Individual Retirement Benefits scheme to contribute part of their earnings to a medical cover provider towards securing post-retirement medical cover. This will harmonize the same benefit as enjoyed by members of Occupational Retirement Benefits Scheme.

Regulation 4: The Public Sector Accounting Standard Board (PSASB) has prescribed accrual basis IPSAS for all MDAs who were previously reporting under IFRS. In order to bring administrative efficiency in determining the Levy payable to RBA, this regulation seeks to harmonize the payment of the RBA levy with the PSASB requirements by allowing the levy to be paid four months after the end of the financial year instead of the current three months.

3. Public Participation

The proposed amendments were subjected to public participation during the month of February 2018

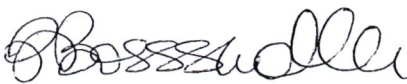
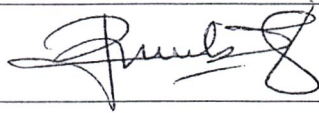
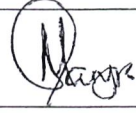
COMMITTEE ON DELEGATED LEGISLATION

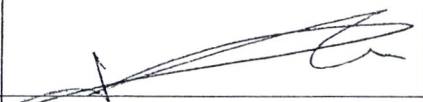
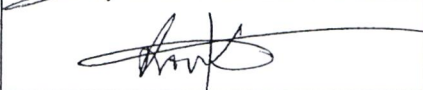
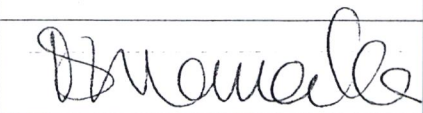
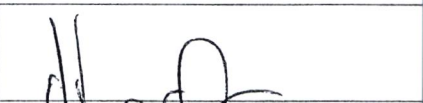


ADOPTION LIST

**REPORT ON THE CONSIDERATION OF THE EXCISE DUTY ACT
(ADJUSTMENT OF RATES FOR INFLATION) SCHEDULE, 2018**

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

DATE: 22/08/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP(Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	

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

MINUTES OF THE 50TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON SATURDAY, 18TH AUGUST, 2018, AT 2.30 P.M. IN ACHIEL BOARDROOM AT ACACIA PREMIER HOTEL, KISUMU

PRESENT

Hon. George Gitonga Murugara, MP - (Chairing)
Hon. Robert Mbui, MP
Hon. Timothy Wanyonyi, MP
Hon. Alice Wahome, MP
Hon. Daniel Maanzo, MP
Hon. (Dr.) Wilberforce Oundo, MP
Hon. Charles Gimose, MP
Hon. William Kamoti, MP
Hon. Jennifer Shamalla, MP
Hon. Ronald Kiprotich Tonui, MP
Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

Hon. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Fatuma Gedi, MP - Vice Chairperson
Hon. Patrick Kariuki Mariru, MP
Hon. Isaac Waihenya Ndirangu, MP
Hon. Muriuki Njagagua, MP
Hon. Martha Wangari, MP
Hon. Muturi Kigano, MP
Hon. William Kamket Kassait, MP
Hon. Munene Wambugu, MP
Hon. Abdi Koropu Tepo, MP
Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - Senior Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel
Ms. Mugure Gituto - Legal Counsel II
Ms. Anne Kigoro - Research & Policy Analyst
Mr. Eric Kanyi - Fiscal Analyst, PBO
Mr. Allan Gituku - Serjeant-at-Arms

MIN.NO. /NA/CDL/2018/291

PRELIMINARIES

Hon George Murugara, MP continues to chair the meeting Pursuant to Standing Order 188 and called the meeting to order at 2.35 p.m. and read the Prayer.

MIN.NO. /NA/CDL/2018/292

COMMITTEE RESOLUTIONS ON THE
CONSIDERATION OF LEGAL NOTICES 138
TO 144

Following consideration of Legal Notices 138, 139, 140, 141, 142, 143 and 144, the Committee resolved as follows –

1) LN. 138: The Tax Procedures (Tax Agents) Regulations, 2018

The Committee resolved to **annul in entirety** the Tax Procedures (Tax Agents) Regulations, 2018 having been proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon William Kamoti, MP.

2) LN. 139: The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018

The Committee resolved to **approve** the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018 having been proposed by Hon Sammy Seroney, MP and seconded by Hon Timothy Wanyonyi, MP.

3) LN.140: The Public Finance Management (Tourism Promotion Fund) Regulations, 2018

The Committee resolved to **annul in entirety** the Public Finance Management (Tourism Promotion Fund) Regulations, 2018, having been proposed by Hon. Ronald Tonui, MP and seconded by Hon William Kamoti, MP.

4) LN. 141: The Public Finance Management (National Government) (Amendment) Regulations, 2018

The Committee resolved to **approve** the Public Finance Management (National Government) (Amendment) Regulations, 2018 having been proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon William Kamoti, MP.

5) LN. 142: The Proceeds of Crime and Anti-Money Laundering (Amendment) Regulations, 2018

The Committee resolved **approve** the Proceeds of Crime and Anti-Money Laundering (Amendment) Regulations, 2018 having been proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon Sammy Seroney, MP.

6) LN. 143: The Air Passenger Service Charge Act (Apportionment) Order, 2018

The Committee resolved to **annul in entirety** the Air Passenger Service Charge Act (Apportionment) Order, 2018 having been proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon Timothy Wanyonyi, MP.

7) LN. 144: The Retirement Benefits (Individual Retirement Benefit Scheme) (Amendment) Regulations, 2018

The Committee therefore resolved to **approve** the Retirement Benefits (Individual Retirement Benefit Scheme) (Amendment) Regulations, 2018 having been proposed by Hon. Timothy Wanyonyi, MP and seconded by Hon Ronald Tonui, MP subject to **rectification of the erroneously cited provisions by way of a corrigenda to published in the Kenya Gazette.**

MIN.NO. CDL /2018/293

ANY OTHER BUSINESS

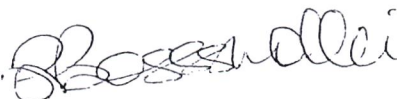
The following issues were raised:-

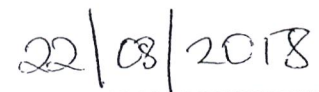
1. Members were informed that the Judiciary Fund Regulations, 2018 are before the Committee for consideration having been tabled before the House on 7th August 2018.
2. The Committee resolved to schedule the retreat with the Ministry of Agriculture and the Coffee Sector Implementation Committee to consider the draft Coffee Regulations from Sunday 2nd to Wednesday 5th September 2018.

MIN.NO. /NA/CDL/2018/294

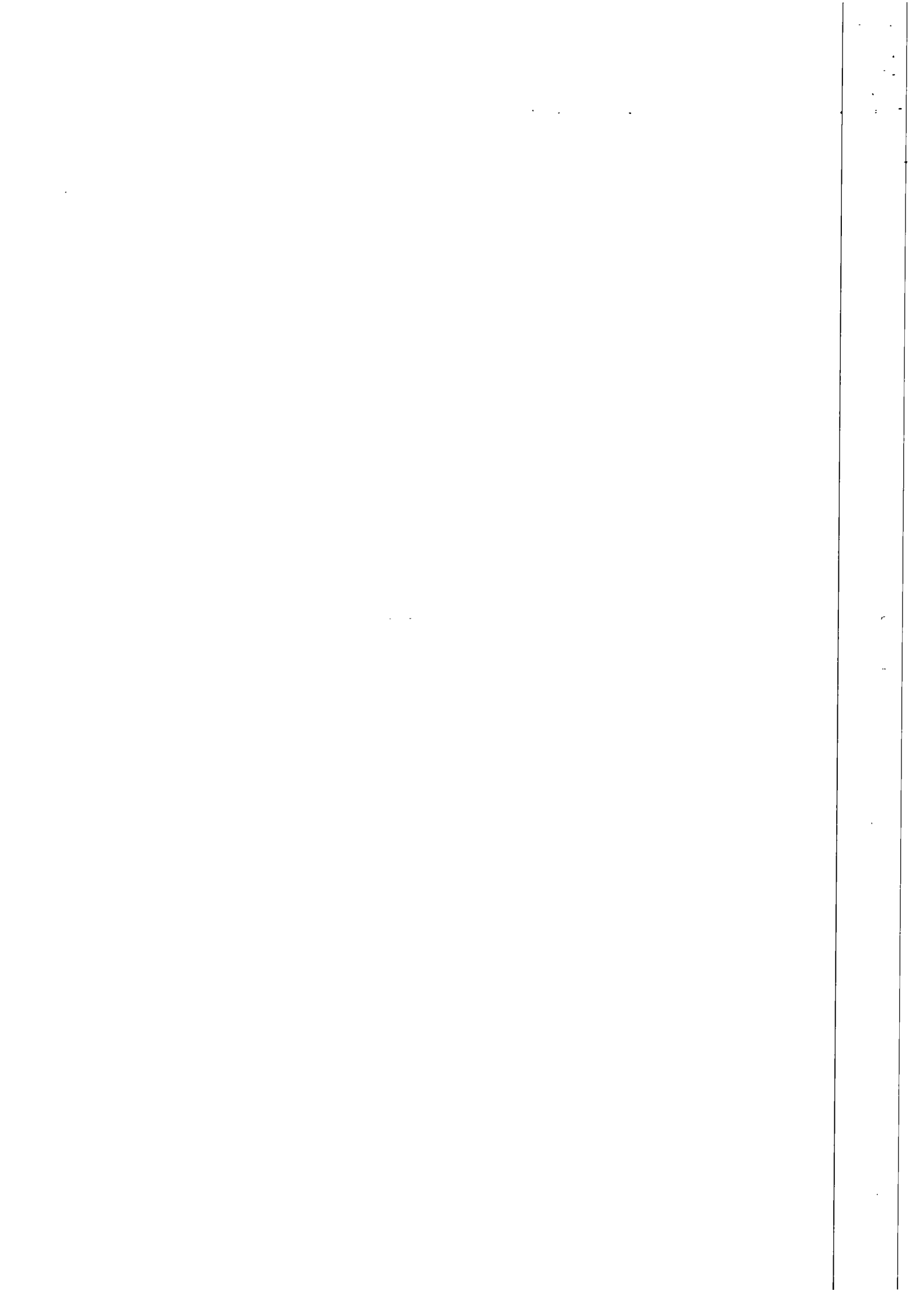
ADJOURNMENT

The meeting was adjourned at 4.05pm until Wednesday, 22 August, 2018 at 11am subject to Speaker's approval.

Signed: 

Date: 

HON. GLADYS BOSS-SHOLLEI, CBS, MP
(CHAIRPERSON)



MINUTES OF THE 49TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON SATURDAY, 18TH AUGUST, 2018, AT 9.00 A.M. IN ACHIEL BOARDROOM AT ACACIA PREMIER HOTEL, KISUMU

PRESENT

Hon. George Gitonga Murugara, MP - (Chairing)
Hon. Robert Mbui, MP
Hon. Timothy Wanyonyi, MP
Hon. Alice Wahome, MP
Hon. Daniel Maanzo, MP
Hon. (Dr.) Wilberforce Oundo, MP
Hon. Charles Gimose, MP
Hon. William Kamoti, MP
Hon. Jennifer Shamalla, MP
Hon. Ronald Kiprotich Tonui, MP
Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

Hon. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Fatuma Gedi, MP - Vice Chairperson
Hon. Patrick Kariuki Mariru, MP
Hon. Isaac Waihenya Ndirangu, MP
Hon. Muriuki Njagagua, MP
Hon. Martha Wangari, MP
Hon. Muturi Kigano, MP
Hon. William Kamket Kassait, MP
Hon. Munene Wambugu, MP
Hon. Abdi Koropu Tepo, MP
Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - Senior Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel
Ms. Mugure Gituto - Legal Counsel II
Ms. Anne Kigoro - Research & Policy Analyst
Mr. Eric Kanyi - Fiscal Analyst, PBO
Mr. Allan Gituku - Serjeant-at-Arms

The National Treasury and Planning

Hon. Nelson Gaichuhie	-	Chief Administrative Secretary
Mr. Wanyambura Mwambia	-	Senior Deputy Director, M&FA
Mr. Geoffrey Malumbe	-	Senior Deputy Director Accountant General
Mr. Lazarus Keizi	-	Manager, Retirement & Scheme

MIN.NO. /NA/CDL/2018/286 PRELIMINARIES

The meeting was called to order at 9.20 a.m. followed by prayers.

MIN.NO. /NA/CDL/2018/287 CONSIDERATION OF THE AIR PASSENGER SERVICE CHARGE ACT (APPORTIONMENT) ORDER, 2018

Brief Overview

The Cabinet Secretary for the National Treasury and Planning in compliance with section 3 of the Air Passenger Service Charge Act, Cap 475 published the Air Passenger Service Charge (Apportionment) Order, 2018 and submitted it for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

Section 3 imposes a passenger service charge for an external and internal journey which the Cabinet Secretary may vary as follows:

- (a) fifty (50) US dollars for an external journey; and
- (b) six hundred (600) shillings for an internal journey.

The section further empowers the Cabinet Secretary to specify, by notice in the Gazette, the manner in which the proceeds of the passenger service charge is apportioned between the Kenya Airports Authority and the Kenya Civil Aviation Authority.

The Order proposes to introduce the Tourism Promotion Fund as an additional beneficiary of the passenger service charge.

The National Treasury informed the Committee that stakeholder consultations were undertaken in the development of the Order and their input taken into consideration.

Observations

- i. The Order was published in the Gazette on 29th of June, 2018 and was received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- ii. The enabling section 3(3) of the Air Passenger Service Charge Act identifies only the Kenya Airports Authority and the Kenya Civil Aviation Authority as beneficiaries of the passenger service charge to the exclusion of all other institutions.

- iii. The Order however purports to introduce the Tourism Protection Fund as an additional beneficiary of the passenger service charge without the express authority of the Air Passenger Service Charge Act.
- iv. **The apportionment of the Tourism Protection Fund is contrary to and inconsistent with the provisions of section 3(3) of the Air Passenger Service Charge Act, the enabling provision and it violates section 24(2) of the Statutory Instruments Act, 2013.**
- v. The Order is unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for the Order pursuant to section 6.
- vi. **The Order was not accompanied by an explanatory memorandum and it is therefore not possible to assess if and the extent to which public participation was undertaken contrary to section 5A of the Statutory Instruments Act.**

Recommendation

The Order violates sections 13(a) and 24(2) of the Statutory Instruments Act.

MIN.NO. /NA/CDL/2018/288

CONSIDERATION OF THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFIT SCHEME) (AMENDMENT) REGULATIONS, 2018

Overview of the Regulations

The Regulations are made pursuant to section 55 of the Retirement Benefits Act No. 3 of 1997 and were submitted for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013. The Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2018 seek to amend Regulations 9, 15 and 32.

The National Treasury informed the Committee that the instrument seeks to harmonise the provisions of Occupational and Individual Retirement Benefits Scheme in terms of levy payment, conflict of interest and contributions to post medical retirement fund. He also informed the Committee that public participation was undertaken during the month of February 2018.

Observations

- a) The Regulations were published in the Gazette on 29th of June, 2018 and received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- b) Pursuant to section 5A of the Statutory Instruments Act the Regulations were not accompanied by an explanatory memorandum and it is therefore not possible to assess whether and the extent to which public participation was undertaken.

- c) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.
- d) Regulation 2 gives an erroneous citation of the Regulations being amended by referring to the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018 and not the Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2018. Regulation 2 further makes reference to paragraph (4) instead of paragraph (5).

Recommendation

The Regulations violate sections 5A of the Statutory Instruments Act.

MIN.NO. /NA/CDL/2018/289

CONSIDERATION OF LEGAL NOTICES 138 TO 144 RELATING TO NATIONAL BUDGET 2018/2019

Detailed presentations on the following Legal Notices were made: -

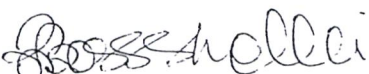
- 1) The Tax Procedures (Tax Agents) Regulations, 2018
 - 2) The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018
 - 3) The Public Finance Management (Tourism Promotion Fund) Regulations, 2018
 - 4) The Public Finance Management (National Government) (Amendment) Regulations, 2018
 - 5) The Procedures of Crime and Anti-Money Laundering (Amendment) Regulations, 2018
 - 6) The Air Passenger Service Charge Act (Apportionment) Order, 2018
 - 7) The Retirement Benefits (Individual Retirement Benefit Scheme) (Amendment) Regulations, 2018
- Matters Arising from the Presentations

The following matters arose following the presentations –

MIN.NO. /NA/CDL/2018/290

ADJOURNMENT

The meeting was adjourned at 11.30 pm until 2.00pm, same day.

Signed: 

Date: 22/08/2018

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

MINUTES OF THE 48TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 17TH AUGUST, 2018, AT 2.00 P.M. IN ACHIEL BOARDROOM AT ACACIA PREMIER HOTEL, KISUMU

PRESENT

Hon. George Gitonga Murugara, MP - (Chairing)
Hon. Robert Mbui, MP
Hon. Timothy Wanyonyi, MP
Hon. Alice Wahome, MP
Hon. Daniel Maanzo, MP
Hon. (Dr.) Wilberforce Oundo, MP
Hon. Charles Gimose, MP
Hon. William Kamoti, MP
Hon. Jennifer Shamalla, MP
Hon. Ronald Kiprotich Tonui, MP
Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

Hon. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Fatuma Gedi, MP - Vice Chairperson
Hon. Patrick Kariuki Mariru, MP
Hon. Isaac Waihenya Ndirangu, MP
Hon. Muriuki Njagagua, MP
Hon. Martha Wangari, MP
Hon. Muturi Kigano, MP
Hon. William Kamket Kassait, MP
Hon. Munene Wambugu, MP
Hon. Abdi Koropu Tepo, MP
Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - Senior Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel
Ms. Mugure Gituto - Legal Counsel II
Ms. Anne Kigoro - Research & Policy Analyst
Mr. Eric Kanyi - Fiscal Analyst, PBO
Mr. Allan Gituku - Serjeant at Arms

The National Treasury and Planning

Hon. Nelson Gaichuhie	-	Chief Administrative Secretary
Mr. Wanyambura Mwambia	-	Senior Deputy Director, M&FA
Mr. Geoffrey Malumbe	-	Senior Deputy Director Accountant General
Mr. Lazarus Keizi	-	Manager, Retirement & Scheme

MIN.NO. /NA/CDL/2018/282

PRELIMINARIES

The meeting was called to order at 2.00 p.m. followed by prayers.

MIN.NO. /NA/CDL/2018/283

CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) REGULATIONS, 2018

Overview of the Regulations

The Public Finance Management (National Government) (Amendment) Regulations, 2018 Regulations are made pursuant to section 205 of the Public Finance Management Act, 2012 and were submitted for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

The Regulations seek to amend Regulation 219 by-

- (i) Providing that 90% of the surplus funds shall be remitted to the Commissioner-General of the Kenya Revenue Authority; and
- (ii) The remittances shall be made not later than thirty days after the surplus is reported in the audited accounts.

The Gazette Supplement No. 32 (Legislative No. 17) issued Legal Notice No. 34 of 20th March 2015, which provides for exemption of Regulatory Authorities under the Public Finance Management Regulations. Despite the exemption, these authorities under the Public Finance Management Regulations are required to remit 90% of their surpluses to the consolidated fund under regulation 219(2) of the principal Regulations. However, there is currently no enabling legal provision for KRA to enforce the collection.

The National Treasury informed the Committee that the Ministry did not undertake public participation since the amendment does not require public participation as KRA is administratively already collecting the surplus from the regulatory authorities. The Ministry further added that the proposed amendment will not impose additional burden on the regulatory authorities.

Observations

- a) The Regulations were published in the Gazette on 29th of June, 2018 and was received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

- b) **The Regulations were not accompanied by an explanatory memorandum pursuant to section 5A of the Statutory Instruments Act** and it is therefore not possible to assess whether and the extent to which public participation was undertaken.
- c) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.

MIN.NO. /NA/CDL/2018/284

**CONSIDERATION OF THE PROCEDURES OF
CRIME AND ANTI-MONEY LAUNDERING
(AMENDMENT) REGULATIONS, 2018**

Overview of the Regulations

In 2013, the Cabinet Secretary for the National Treasury and Planning in compliance with section 134 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 published the Proceeds of Crime and Anti-Money Laundering Regulations, 2018 and submitted them for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

The Regulations seek to amend the proceeds of Crime and Anti- Money Laundering Regulations, 2013 in order to expand the scope of the Regulations to include combating terrorism financing. The proposal will ensure that reporting institutions:-

- (i) Have policies in place or take such other measures as may be needed to prevent the misuse of new technological development in money laundering and terrorism financing schemes.
- (ii) Have in place policies and procedures top address any specific risks associated with non-face to face business relationship or transactions.

The National Treasury informed the Committee that public participation was not undertaken on these Regulations as it deemed the amendment as minor. The current Regulations provide for Anti-Money Laundering measures but do not include measures for anti-terrorism financing.

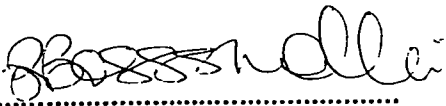
Observations

- a) The Regulations were published in the Gazette on 29th of June, 2018 and was received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- b) The Regulations were not accompanied by an explanatory memorandum in accordance with section 5A of the Statutory Instruments Act and it is therefore not possible to assess whether and the extent to which public participation was undertaken.
- c) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.

MIN.NO. /NA/CDL/2018/285

ADJOURNMENT

The meeting was adjourned at 5.50 pm until Saturday, 18th Aug 2018 at 9.00 a.m.

Signed: 
.....

Date: 12/08/2018
.....

HON. GLADYS BOSS-SHOLLEI, CBS, MP
(CHAIRPERSON)

**MINUTES OF THE 47TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON FRIDAY, 17TH AUGUST, 2018, AT 9.30 A.M. IN ACHIEL
BOARDROOM AT ACACIA PREMIER HOTEL, KISUMU**

PRESENT

Hon. George Gitonga Murugara, MP - (Chairing)
Hon. Robert Mbui, MP
Hon. Timothy Wanyonyi, MP
Hon. Alice Wahome, MP
Hon. Daniel Maanzo, MP
Hon. (Dr.) Wilberforce Oundo, MP
Hon. Charles Gimose, MP
Hon. William Kamoti, MP
Hon. Jennifer Shamalla, MP
Hon. Ronald Kiprotich Tonui, MP
Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

Hon. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Fatuma Gedi, MP - Vice Chairperson
Hon. Patrick Kariuki Mariru, MP
Hon. Isaac Waihenya Ndirangu, MP
Hon. Muriuki Njagagua, MP
Hon. Martha Wangari, MP
Hon. Muturi Kigano, MP
Hon. William Kamket Kassait, MP
Hon. Munene Wambugu, MP
Hon. Abdi Koropu Tepo, MP
Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - Senior Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel
Ms. Mugure Gituto - Legal Counsel II
Ms. Anne Kigoro - Research & Policy Analyst
Mr. Eric Kanyi - Fiscal Analyst, PBO
Mr. Allan Gituku - Serjeant at Arms

The Ministry of National Treasury and Planning

Hon. Nelson Gaichuhie	-	Chief Administrative Secretary
Mr. Wanyambura Mwambia	-	Senior Deputy Director, M&FA
Mr. Geoffrey Malumbe	-	Senior Deputy Director Accountant General
Mr. Lazarus Keizi	-	Manager, Retirement & Scheme

MIN.NO. /NA/CDL/2018/277

PRAYERS AND PRELIMINARIES

Hon. George Murugara, MP, was elected by Members present to Chair the retreat's proceedings pursuant to SO 188. He thereafter assumed chair and called the meeting to order at half past nine o'clock followed by prayers. Introductions were thereafter conducted.

The Ag. Chairperson conveyed the apologies of the substantive Chair, Hon. Gladys Boss Shollei, MP and welcomed participants to the retreat. He further thanked the Chief Administrative Secretary of the National Treasury for his availability to engage the Committee on the Instruments.

Hon. Nelson Gaichuhie, Chief Administrative Secretary of the National Treasury, thanked the Committee for the invitation to confer on the various regulations before the Committee. He also conveyed a written apology from Dr. Kamau Thugge, CBS, Principal Secretary of the National Treasury who was with the Committee on Finance & National Planning considering the Finance Bill 2018.

He sought the Committee's support in approving the pending instruments and assured the Committee of pre-publication consultations on instruments so as to hasten consideration once submitted to Parliament.

MIN.NO. /NA/CDL/2018/278

CONSIDERATION OF THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

Brief Overview

The Cabinet Secretary for the National Treasury and Planning in compliance with section 112 of the Tax Procedures Act, 2015 published the Tax Procedures (Tax Agents) Regulations, 2018 and submitted them for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

The Regulations seek to;

- a) prescribe the conditions and procedures for registration of tax agents;
- b) outline the functions of a tax agent who is usually a member of the Institute of Certified Public Accountants, an advocate of Kenya with a valid practising certificate or a former administrator with at least ten years' experience in tax administration;
- c) require the Commissioner-General of the Kenya Revenue Authority to maintain a register of tax agents;

- d) establishes a Tax Agents Committee which shall consider applications for registration of tax agents;
- e) prescribes the procedure for investigations of allegations of misconduct against a tax agent; and
- f) Sets offences and penalties.

Observations

- a) The Regulations were published in the Gazette on 29th of June, 2018 and was received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- b) The Tax Procedures Act, 2015 commenced on 19th January, 2016 and section 19 provides that an individual or a partnership can apply to the Commissioner General of KRA.
- c) Application for a license as a tax agent is in a prescribed form. The recommendation for registration will be made by the Tax Agents Committee.
- d) Section 20 provides that the Commissioner shall issue a license to a fit and proper applicant. It further provides that Regulations may provide for guidelines for determining whether or not a person is fit and proper to prepare tax returns.
- e) Pursuant to section 5A of the Statutory Instruments Act **the Regulations were not accompanied by an explanatory memorandum** and it is therefore not possible to assess whether and the extent to which public participation was undertaken;
- f) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.
- g) Pursuant to section 11 of the Act, **the Regulations were also transmitted to the National Assembly within seven sitting days after the publication of the Regulations.**
- h) The Regulations do not provide for or make special provision on the effect of the transition. In other words, it does not provide for a transitional mechanism/provision and the status of existing tax agents. **The Regulations are therefore defective in their drafting pursuant to section 13(h) of the Act.**
- i) The enabling section 112 empowers the Cabinet Secretary to prescribe offences and penalties when making regulations. Regulation 10 thereof prescribes the offences and provides that a person is found culpable on conviction shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years. **This contravenes section 24(5) of the Statutory Instruments Act which provides that a penalty for the breach of a statutory instrument shall not exceed twenty thousand shillings or such term of imprisonment not exceeding six months or both.**

Plenary Discussions

- i. the Committee enquired about the database for professional tax agents and requested the Ministry to provide a list of registered tax agents across the country.

- ii. The Committee further enquired about registration of individuals as tax agents and their qualifications, penalties and offences for tax agents who fail to file tax returns on behalf of a tax payer who seeks the services from the tax agent as recommended.
- iii. The Committee was also concerned about lack of enabling legislation for Kenya Revenue Authority (KRA) to enforce the collection of the 90% of the surplus from Authorities under Regulation 219(2) of the principal Regulations.

Way Forward

The Committee emphasised the need for the National Treasury and Planning to adhere to the provisions of Article 10 and 118 of the Constitution, sections 5 and 11 (2) of the Statutory Instruments, Act, 2013 on public participation. The Explanatory Memorandum (EM) submitted alongside the Regulations must clearly demonstrate sufficient and adequate public participation.

MIN.NO. /NA/CDL/2018/279 CONSIDERATION OF THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2018

Brief Overview

The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018 seek to amend regulation 3, 8, 25 and 39. They are made pursuant to section 55 of the Retirement Benefits Act No. 3 of 1997 and were submitted for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

The National Treasury informed the Committee that the Regulations seek to amend the principal Regulations to define a medical fund, clarify matters relating to conflict of interest, levy payment due date, amount to be transferred to post medical fund on retirement, commutation of benefits and giving retirement benefits members an opportunity to use either an annuity or income draw down, or both at the same time. This will enable retirees to transfer part of the retirement income into medical scheme for their cover and contribute to the achievement of one of the Big Four Agendas.

The Ministry further added that the proposed amendments were subjected to public participation during the month of February 2018 where it visited 46 Counties (Mandera was excluded). The Ministry laid before the Committee additional information to the Explanatory Memorandum and further evidence to that prove stakeholder consultations were undertaken.

Observations

- (i) The Regulations were published in the Gazette on 29th June, 2018 and received for tabling before the House on 4th July 2018. This is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- (ii) The Regulations violate sections 5A of the Statutory Instruments Act since they were **not accompanied by an explanatory memorandum** and it was therefore not possible to assess whether and the extent to which public participation was undertaken.

- (iii) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.

MIN.NO. /NA/CDL/2018/280

**CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (TOURISM PROMOTION FUND)
REGULATIONS, 2018**

Brief Overview

Section 24 (4) provides that the Cabinet Secretary for the National Treasury may establish a national government public fund with the approval of the National Assembly. Consequently, the Cabinet Secretary published the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 and submitted them for scrutiny in accordance with section 11 of the Statutory Instruments Act, 2013.

The Regulations seek to;

- (a) Establish the Tourism Promotion Fund (the Fund) with an initial capital of 200 million shillings appropriated by Parliament in the 2018/19 financial year. This allocation has not been traced in the budget books.
- (b) Provide for financing and development, promotion and branding of Kenya or programmes and initiatives in relation to tourism, tourism facilities, innovations and inventions, tourism intelligence, tourism data capture among others.
- (c) Prescribe the funding eligibility criteria for programmes or infrastructure development projects of a state corporation or state department.
- (d) Outlines the procedure for the application of funding and the conditions for the disbursement of funds.
- (e) Cites instances where the Officer Administering the Fund may withhold payments of a tourism implementing agency.
- (f) Provide for the imposition of sanctions by the Board with the approval of the Cabinet Secretary responsible for Tourism and the Cabinet Secretary responsible for the National Treasury.
- (g) Establish an Oversight Board for the Fund which advises the Cabinet Secretary on the funding requirements of the Fund, amounts and timings for the fund transfers among others. The Oversight Board further approves the financial statements and reviews the investment of surplus funds from the Fund.
- (h) Designate the Principal Secretary responsible for Tourism as the Officer Administering the Fund and is responsible *inter alia* for the supervision, control, administration and coordination of the Fund.
- (i) Provide for the procedure for the winding up of the Fund pursuant to section 24(11) of the Public Finance Management Act.

The National Treasury informed the Committee that regulatory impact assessment was not prepared for the instrument. On public participation, the Ministry informed the Committee that consultative forums were undertaken with key stakeholders and their input taken into account before finalisation of the Regulations. Some of the key stakeholders consulted are Ministry of

Tourism and Wildlife, the relevant Accounting Officers of National and County Governments as well as international experts among others.

Observations

1. The Regulations were published in the Gazette on 29th of June, 2018 and was received for tabling before the House on 4th July 2018, therefore being **within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**
2. The Public Finance Management Act, 2012 commenced on 27th August, 2012 and the enabling section 24 provide that the Cabinet Secretary shall designate a person to administer any public fund established under the section.
3. The Regulations were **not accompanied by an explanatory memorandum, pursuant to section 5A of the Statutory Instruments Act** and it is therefore not possible to assess whether and the extent to which public participation was undertaken.
4. The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for these Regulations pursuant to section 6.
5. The Regulations violate sections 13 (a) (c), (n), (q) of the Statutory Instruments Act as follows –
 - a) Regulation 6 provides that the Fund shall consist of proceeds realized under section 3 of the Air Passengers Service Charge Act. This is a misrepresentation of the provision of the said section which provides that-

“S.3(3) All proceeds of the charge imposed under this section shall be apportioned between the Kenya Airports Authority and the Kenya Civil Aviation Authority in such manner as the Cabinet Secretary may, by notice in the Gazette, specify.”

This provision is therefore not in accordance with the provisions of the Air Passengers Service Charge Act and it contravenes section 13(a) of the Statutory Instruments Act.

- b) Regulation 15 provides that the Oversight Board may with the prior approval of the Cabinet Secretary responsible for matters relating to Tourism and the Cabinet Secretary responsible for the National Treasury; impose such penalties including the suspension of funding for failure to comply with the provisions of the Regulations. **The enabling section does not give express authority to impose sanctions or other penalties. This is a contravention of section 13(n) of the Statutory Instruments Act.**
 - c) Regulation 17 establishes the Oversight Board which provides general supervision of the Fund. The enabling provision does not expressly give powers for the establishment of a Board and is therefore inconsistent with the Public Finance Management Act and section 24(2) of the Statutory Instruments Act. Further the

establishment of a Board is a matter that would be properly dealt with in an Act of Parliament and it contravenes section 13(c) of the Statutory Instruments Act.

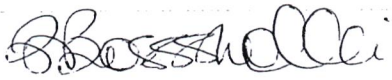
d) Regulation 17(a) on the composition of the Board appoints the Principal Secretary responsible for matters relating to tourism as the alternate chairperson in the absence of the Cabinet Secretary responsible for Tourism. Under regulation 10, the Principal Secretary responsible for Tourism is appointed as the Officer Administering the Fund and is therefore responsible for the supervision, control and administration of the Fund and the implementation of functions outlined in regulations 21-23. This is likely to raise corporate governance issues as there is no clear distinction or separation between the policy makers and the policy implementers.

6. Members also raised concern regarding an allocation that has not been traced in the FY 2018/2019 National Budget for the establishment of the Tourism Promotion Fund (the Fund) with an initial capital of Kshs. 200 million shillings appropriated by Parliament.

MIN.NO. /NA/CDL/2018/281

ADJOURNMENT

The meeting was adjourned at 12.00 p.m. until 2.00 p.m. same day.

Signed: 

Date: 22/08/2018

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



MINUTES OF THE 46TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 14TH AUGUST, 2018, AT 11.30 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT

Hon. Gladys Boss Shollei, CBS, MP	-	Chairperson
Hon. Fatuma Gedi, MP	-	Vice Chairperson
Hon. Robert Mbui, MP		
Hon. Patrick Kariuki Mariru, MP		
Hon. Timothy Wanyonyi, MP		
Hon. Alice Wahome, MP		
Hon. Isaac Waihenya Ndirangu, MP		
Hon. Daniel Maanzo, MP		
Hon. (Dr.) Wilberforce Oundo, MP		
Hon. George Gitonga Murugara, MP		
Hon. Munene Wambugu, MP		
Hon. Muriuki Njagagua, MP		
Hon. Martha Wangari, MP		
Hon. William Kamoti, MP		
Hon. Jennifer Shamalla, MP		
Hon. William Kamket Kassait, MP		
Hon. Ronald Kiprotich Tonui, MP		
Hon. Sammy Seroney, MP		
Hon. Muturi Kigano, MP		

ABSENT WITH APOLOGY

Hon. Charles Gimose, MP	
Hon. Abdi Koropu Tepo, MP	
Hon. Alfred Sambu, MP	

IN-ATTENDANCE

National Assembly Secretariat

Mr. Jimale Mohamed	-	Third Clerk Assistant
Mr. Dima Dima	-	Principal Legal Counsel
Ms. Anne Kigoro	-	Research & Policy Analyst
Mr. Josphat Motonu	-	Fiscal Analyst, PBO
Mr. Charles Ayari	-	Audio Records Officer
Mr. Allan Gituku	-	Serjeant -at-Arms

MIN.NO. /NA/CDL/2018/271 PRAYER & PRELIMINARIES

Pursuant to Standing Order 188, the Members present elected Hon. (Dr.) Wilberforce Oundo, MP, to chair the meeting, as proposed by Hon. George Gitonga Murugara, MP and seconded by Hon. Jennifer Shamalla, MP. Hon. Oundo thereafter assumed the Chair and called the meeting to order at thirty-five minutes past eleven o'clock followed by the Prayer.

MIN.NO. /NA/CDL/2018/272 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Confirmation of Minutes of the 43rd 44th and 45th sittings were read and confirmed as a true record of the proceedings.

Minutes of the 43rd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Daniel Maanzo, MP and Hon. Jennifer Shamalla, MP respectively.

Minutes of the 44th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Jennifer Shamalla, MP and Hon. Timothy Wanyonyi, MP respectively.

Minutes of the 45th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Wilberforce Oundo, MP respectively.

MIN.NO. /NA/CDL/2018/273 MATTERS ARISING

Under MIN.NO. /NA/CDL/2018/242

1. Attendance List

Hon. Wambugu Munene, MP noted that his name was recorded absent while he was present during the breakfast meeting at Intercontinental Hotel on Wednesday, 1 August, 2018.

2. Tracking of Committee Reports Adopted by the House

Members also noted the need to fast track implementation of the Committee's Reports adopted by the House. Members expressed concern that some of the regulation-making authorities have failed to act on Committee resolutions following approval of the Committee's reports by the House. In this regard, Members singled out the Kenya Civil Aviation Authority which continues to allow importation of drones despite the House's resolution on the same.

The Committee resolved to be furnished with copies of correspondence conveying the House's resolutions to the various regulation making authorities on annulment of statutory instruments.

3. Implementation of the Delegated Legislation Information System (DLIS)

The Chairperson informed the Committee that she requested the Clerk of the National Assembly to introduce and implement the Delegated Legislation Information System (DLIS) that will create a one-stop shop for processing and reporting on all instruments referred to the Committee.

She informed the meeting that the system will offer real time information on the status of all instruments before the National Assembly and the status of their consideration. She reported that she is awaiting the Clerk's approval of the matter and will report progress in subsequent meetings.

**MIN.NO. /NA/CDL/2018/274 CONSIDERATION OF LEGAL NOTICES 138 – 144
RELATING TO THE FY 2018/2019 NATIONAL
BUDGET**

Hon Gladys Boss Shollei, CBS, MP assumed the Chair and presided over consideration of Legal Notices Nos. 138 to 144.

The Fiscal Analyst presented key highlights of the following Instruments:-

- (i) The Tax Procedures (Tax Agents) Regulations, 2018
- (ii) The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018
- (iii) The Public Finance Management (Tourism Promotion Fund) Regulations, 2018
- (iv) The Public Finance Management (National Government) (Amendment) Regulations, 2018
- (v) The Procedures of Crime and Anti-Money Laundering (Amendment) Regulations, 2018
- (vi) The Air Passenger Service Charge Act (Apportionment) Order, 2018
- (vii) The Retirement Benefits (Individual Retirement Benefit Scheme) (Amendment) Regulations, 2018

Committee Observations

The Committee observed that all the seven (7) instruments submitted to the Committee were submitted to Parliament within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (No 23 of 2013) having been published on the 29th of June, 2018 and tabled in the House on 4th July 2018.

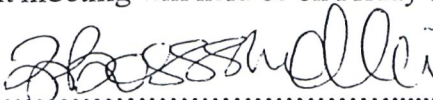
The Committee deferred further consideration of the matter until the scheduled meeting with the National Treasury to be held on Friday, 17 August, 2018 in Kisumu.

MIN.NO. /NA/CDL/2018/275 ANY OTHER BUSINESS

Members were notified that preparations for the retreat were underway and that they would be updated on the progress through their mobile phones.

MIN.NO. /NA/CDL/2018/276 ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past twelve o'clock.
The next meeting will held be on Friday 17th August 2018 at 9.00 am in Kisumu.

Signed: 

Date: 22/08/2018

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