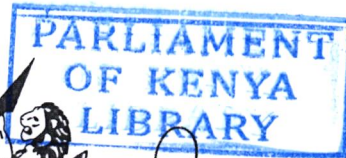


Approved for tabling.



SNA
23/8/18

Paper laid
By Hon. G. Boss-Sindiga, MP
Chair-Delegated Legislation
on Thurs, August 23, 2018
Mw (Pr)

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

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

(Legal Notice No. 164 of 2018)

AUGUST 2018

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

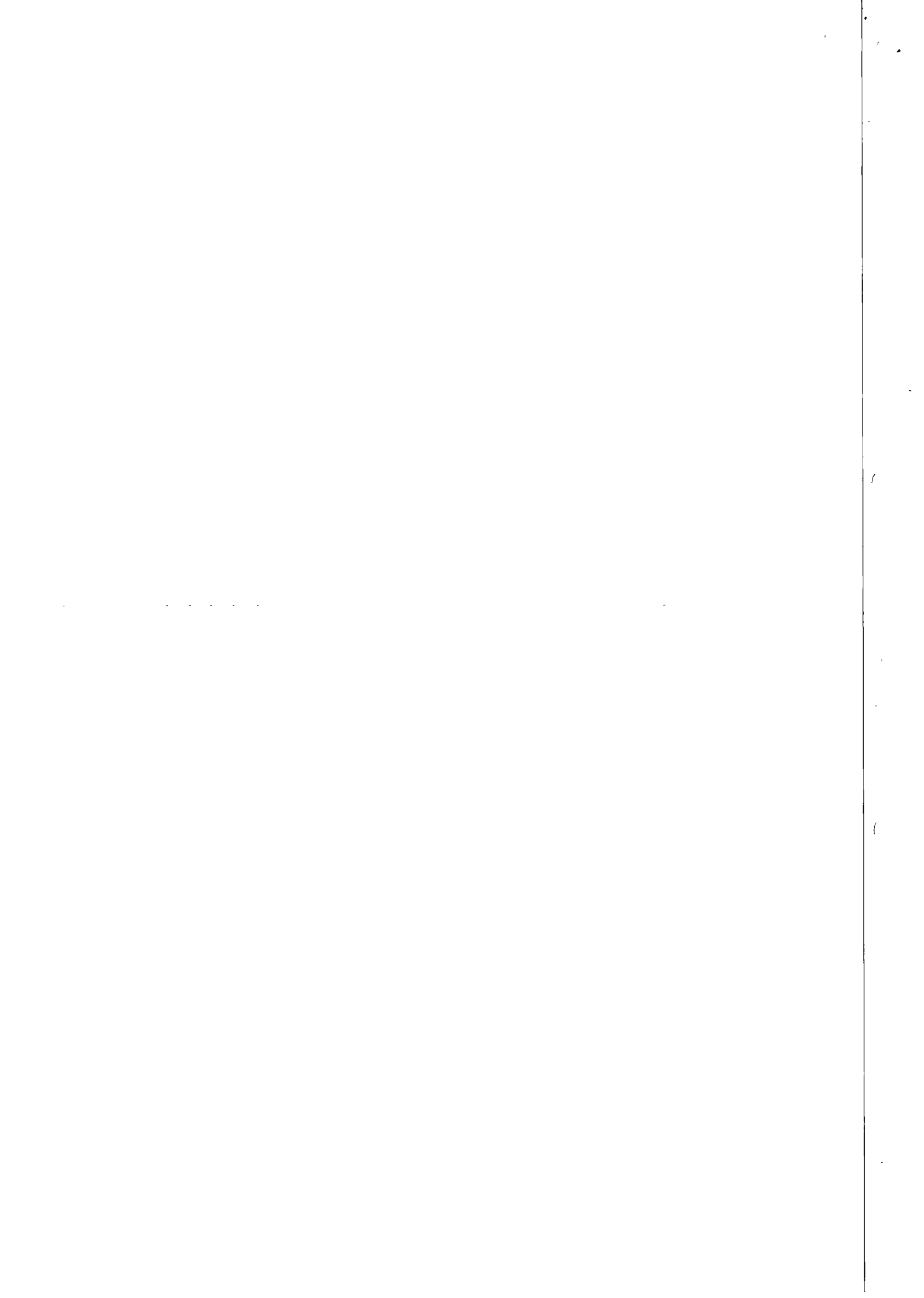


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ABBREVIATIONS

LN	Legal Notice
SI Act	Statutory Instruments Act
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018 (LN. No. 164 of 2018) was published in the Gazette on 13th July, 2018 and tabled before the National Assembly on 23rd July 2018, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Legal Notice was issued in accordance with Section 10 of the Excise Duty Act which empowers the Commissioner General of the Kenya Revenue Authority to make adjustment on the specific rate of excise duty contained in the First Schedule, after every two years, using the formula specified in Part I of the First Schedule, with effect from the 1st August, 2018.

Two years after the date of commencement of the Act was 2nd day of December 2017 while the adjustment day is defined in Part III of the First Schedule to the Act as *1st day of July of every Year*. The first adjustment, therefore, ought to have been done on the **1st day of July, 2018** being within the 2nd year from the date of commencement of the Act, being the adjustment day within the meaning of Part III of the First Schedule to the Excise Duty Act.

The Committee scrutinized the Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018 in accordance with the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Excise Duty Act (No. 23 of 2015), and the Statutory Instruments Act (No 23 of 2013 and made various observations which informed the decision to annul in entirety, the submitted instrument.

One of the key findings of the Committee is that while Section 10 of the Excise Duty Act contemplates that the **adjustment ought to be done on all excisable goods specified in Part I of the Schedule**, the Legal Notice excluded all excisable goods specified in the first table of **Part 1 of the First Schedule that relate to spirits and oils** and adjustments were only made on goods specified in the second table. The detailed findings of the Committee are contained in section 2.0 of this Report.

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

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the Consideration of the Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 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. Josphat Motonu	Fiscal Analyst

2.0 CONSIDERATION OF THE INSTRUMENT

2.1 Introduction and Background Information

The Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018 (Legal Notice No. 164 of 2018) was made pursuant to powers conferred on the Commissioner General of the Kenya Revenue Authority by section 10 of the Excise Duty Act (*No. 23 of 2015*) hence is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*) and was therefore properly before the Committee.

The Legal Notice was published in the Gazette on 13th July, 2018 and was received for tabling before the House on 23rd July 2018, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

2.2 Scrutiny of the Instrument

In considering the Legal Notice No 164 of 2018 on adjustment of rates for inflation, the Committee was guided by the Constitution, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the, Excise Duty Act (*No. 23 of 2015*), and the Statutory Instruments Act (*No 23 of 2013*).

Section 8 of the Excise Duty Act (*No. 23 of 2015*), which commenced on the 1st day of December, 2015 allows the Cabinet Secretary (*on his own discretion or if he deems it necessary*) to amend the First Schedule to the Act but if he so does, he must, -

- (a) only increase or decrease by an amount not exceeding 10% of the rate specified in the Act (Schedule);
- (b) the increase or decrease must be published as an Order Statutory Instrument (S.I) in the gazette and can only take effect from the date he specifies in the gazette notice(Order);
- (c) not impose excise duty on goods or services that are not excisable;
- (d) must cause the Order to be laid before the National Assembly Legal Notice (LN) within seven (Calendar) days after its publication in the gazette;

It further provides that if the National Assembly passes a resolution disapproving of the variation within twenty days from the first day on which the House next sits after the variation has been laid, the Order ceases to have effect.

However, Section 10 of the Excise Duty Act (*No.23 of 2015*) **compels** the Commissioner General of the Kenya Revenue Authority by notice in the gazette to adjust the specific rates of exercise duty **every two years** to take into account inflation. The formula to be used in the adjustment of the rate is specified in Part 1 of the first Schedule to the Act.

The Act commenced on the 1st day of December, 2015 and the Cabinet Secretary is required by law to adjust the specific rates of exercise duty **every two years**.

Article 259(5) (c) of the Constitution provides that in calculating time between two events for any purpose under the constitution, if the time is expressed ...as years , the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.

Two years after the date of commencement of the Act was therefore 2nd day of December 2017 while the adjustment day is defined in Part III of the First Schedule to the Act as *1st day of July of every Year*. The first adjustment ought to have been done on the **1st day of July, 2018** being within the 2nd year from the date of commencement of the Act being the adjustment day within the meaning of Part III of the First Schedule to the Excise Duty Act.

Section 10 of the Excise Duty Act contemplates that the adjustment be done on **all excisable goods specified in Part I of the Schedule, yet the Legal Notice No. 164 excluded all excisable goods specified in the first table in Part 1 of the First Schedule that relate to spirits and oils** and adjustments have only been made on goods specified in the second table.

Expected Benefit of the Adjustment of Inflation Rate

Excise duty (also referred to as “sin” tax) is levied on products such as alcohol and tobacco which are considered harmful to the users and the citizenry in general. Therefore, the expected benefit of the adjustment of rates for inflation is intended to deter consumption of such products and also raise revenue which will be re-invested to address the effects caused by the usage, as a corrective measure.

However, the likely **disadvantage** of this adjustment for inflation is the risk of introducing potential frequent changes in prices of goods and services affected by the inflation change. This will most likely affect business and investment planning.

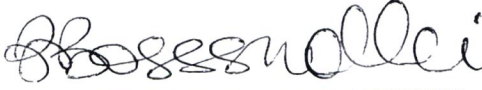
2.3 Committee Findings

Following comprehensive scrutiny of the Legal Notice, the Committee made the following findings –

1. **THAT**, there was attached to the Legal Notice, an Explanatory Memorandum which attempted to provide for the background of the provisions contained in the Legal Notice, the objectives of the Legal Notice and the Financial implications thereof. **There was, however, no reference to stakeholder consultations/ public participation as contemplated in section 5 read together with the Schedule to the Statutory Instruments Act, 2013 and the spirit of Article 10 and Article 118 of the Constitution;**
2. **THAT**, the adjustment date specified in the Act is 1st day of July and hence the Legal Notice ought to have been published on the 1st day of July 2018 and not 1st day of August, 2018. **It therefore appears that there was an unjustifiable delay in its publication, in contravention of section 13(j) of the Statutory Instruments Act, 2013;**
3. **THAT**, the main objective of the Legal Notice No. 164 of 2018 is to actualize the specified inflation adjustment of specific rate of excise duty using a formula. Using the inflation rate of 5.2%, the formula was applied accurately on the items contained in the Legal Notice. **The Legal Notice, however, excluded all excisable goods specified in the First table in Part 1 of the First Schedule that relates to spirits and oils and adjustments have only been made on goods specified in the second table. This is in contravention of Section 10 of the Excise Duty Act.**

3.0 RECOMMENDATION

The Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, the Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018 be annulled in entirety for the aforementioned reasons.

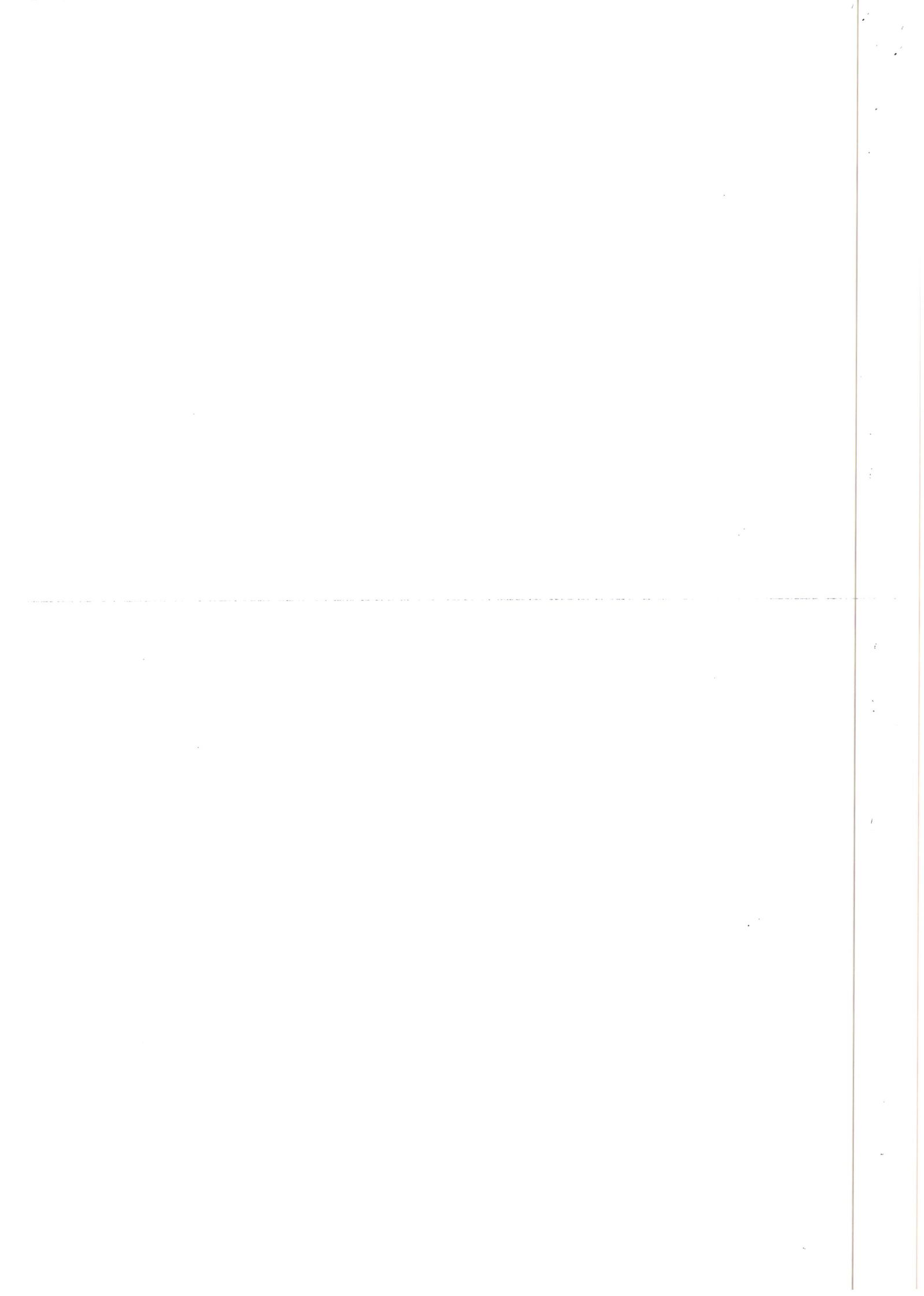
Signed.....


Date..... 23/08/2018

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

ANNEXURES

- a) Committee Minutes
- b) Sitings
- c) Adoption List
- d) Copy of Legal Notice 164, on Adjustments Of Rates For Inflation Under The Excise Duty Act (No. 23 Of 2015)
- e) Correspondence



RECEIVED BY THE
TREASURY BUILDING
NAIROBI
3rd JULY 2018

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 Head, take the
list of resolutions
and lay them
to committee
5/25/18
6/4/18

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

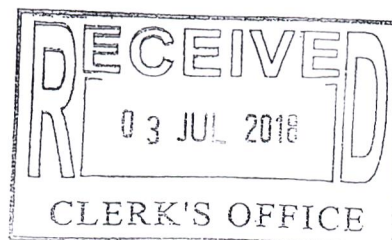
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4/7/18

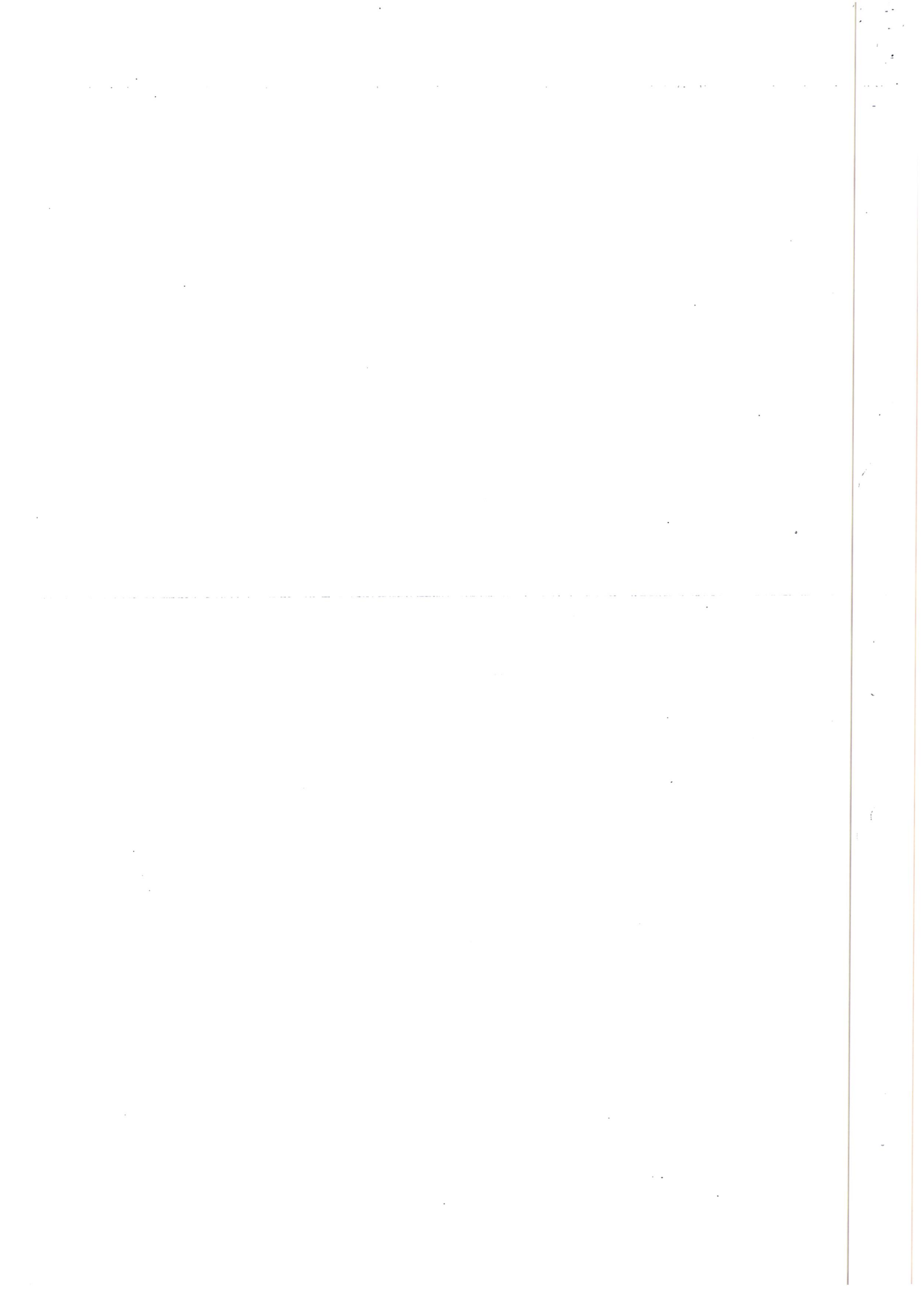
Copy to:

The Chairperson
Delegated Legislation Committee
National Assembly
NAIROBI

The Principal Secretary
National Treasury

Director, M&FA
National Treasury





(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 other 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.

- (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;

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—

“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;
 - (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.
- Cap. 475.
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) 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;

Approved for tabling

BA
SNA
27/2/18



Paper laid
Tuesday
27/2/2018
Adk

REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY

27 FEB 2018

TWELFTH PARLIAMENT – SECOND SESSION

REPORT OF THE BUDGET AND APPROPRIATIONS COMMITTEE ON THE BUDGET POLICY
STATEMENT AND THE DEBT MANAGEMENT STRATEGY FOR 2018/2019 AND THE MEDIUM TERM

FEBRUARY 2018

402

280

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andrew.kihoro@gmail.com

100

andrew.kihoro@gmail

Institutions = 402

216

constituencies = 280

Committee = ~~180~~
188

0720838549

Annual = 36

150

~~285~~

→ Thu June

402	
280	
682	12 th July
188	
870	
36	
906	

- (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 revoted;
- (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.

Powers of Officer Administering the Fund.

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

Secretariat support for Officer Administering the Fund.

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

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.

Citation.

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)–

L.N. 118/2000.

(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.

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

(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

MINUTES OF THE 45TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 7TH AUGUST, 2018, AT 11.00 A.M. IN THE SMALL
DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT

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. 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. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Charles Gimose, 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. Anne Kigoro - Research & Policy Analyst
Mr. Josphat Motonu - Fiscal Analyst, PBO
Mr. Charles Ayari - Audio Records Officer
Ms. Mary Otieno - Office Support Staff

- (a) the Legal Notice is a statutory instrument and had a force of law within the meaning of section 2 of the Statutory Instruments Act to the extent that it was made pursuant to powers conferred on the Commissioner General of the Kenya Revenue Authority under section 10 read together with section 8 of the Excise Duty Act (No. 23 of 2015),
- (b) the Legal Notice was 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 13th of July, 2018 and was received for tabling before the House on 23rd July 2018,
- (c) There is an Explanatory Memorandum which provides for background of the provisions contained in the Legal Notice, the objectives of the Legal Notice and the Financial implications thereof **without any reference to consultation as contemplated in section 5** read together with the schedule to the Statutory Instruments Act. The regulation-making authority did not therefore adequately undertake public participation as contemplated in section 5 read together with the schedule to the Statutory Instruments Act.
- (d) The adjustment date specified in the Act is 1st day of July and hence the Legal Notice should have been published on the 1st day of July 2018 and not 1st day of August, 2018 hence appears to have **unjustifiable delay in its publication in contravention of section 13(j) of the Statutory Instruments Act.**
- (e) the Notice left out all excisable goods specified in the First Table in Part 1 of the First Schedule that relates to spirits and oils and adjustments have only been made on goods specified in the second Table.

Recommendation

The Committee therefore recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, that the Legal Notice 164 of 2nd July 2018 be **annulled in entirety** for the aforementioned reasons to allow inclusion of all items with specific excise duty rate in the First Schedule of the Excise Duty Act and also apply the correct adjustment day as well as inclusion of all items that were omitted from the adjustment.

This decision was proposed by Hon. Daniel Maanzo, MP and seconded by Hon. Robert Mbui, MP.

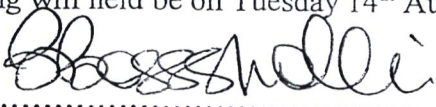
MIN.NO. /NA/CDL/2018/266 ANY OTHER BUSINESS

Honourable Members were requested to confirm their availability for the retreat scheduled for 16-19 August 2018 in Mombasa and indicate their flight itinerary for booking purposes.

MIN.NO. /NA/CDL/2018/267 ADJOURNMENT

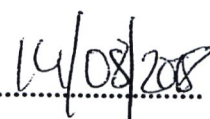
There being no other business, the meeting was adjourned at thirty minutes past twelve o'clock. The next meeting will held be on Tuesday 14th August 2018 at 11.00 am.

Signed:.....



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

Date:.....




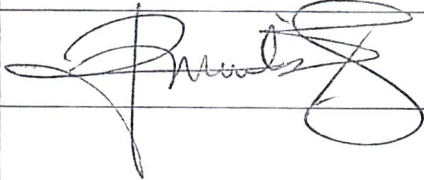
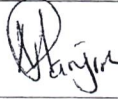
COMMITTEE ON DELEGATED LEGISLATION


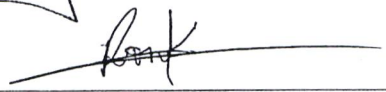
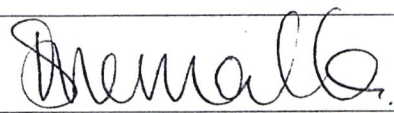


ADOPTION LIST

REPORT ON THE CONSIDERATION OF THE PUBLIC
FINANCE MANAGEMENT (TOURISM PROMOTION FUND)
REGULATIONS, 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	

	HON. MEMBER	SIGNATURE
11.	Hon. William Kamoti, MP	
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	