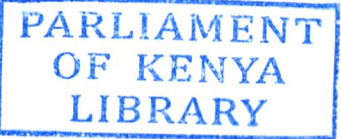


Approved for tabling.



SWA
17/10/18

THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PUBLIC
FINANCE MANAGEMENT (SPORTS, ARTS AND SOCIAL
DEVELOPMENT FUND), REGULATIONS, 2018
(LEGAL NOTICE No. 174 of 2018)

OCTOBER 2018

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

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ABBREVIATIONS

LN	Legal Notice
PFM Act	Public Finance Management Act
RMA	Regulatory Making Authority
SI Act	Statutory Instruments Act
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

Section 24 (4) of the Public Finance Management Act (No. 18 of 2012) empowers the Cabinet Secretary for the National Treasury to establish a national government public fund with the approval of the National Assembly. Consequently, the Cabinet Secretary published the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 on 10th August, 2018 vide LN No.174 of 2018 and submitted them for scrutiny on 15th August, 2018 in accordance with section 11 of the Statutory Instruments Act, 2013.

The Regulations seek to establish a Fund with the sources of the Fund being *inter alia*, proceeds required to be paid into the Fund under the Betting, Lotteries and Gaming Act, proceeds required to be paid into the Fund under the Income Tax Act, monies appropriated by the National Assembly, grants and donations, income generated from proceeds of the Fund and monies accruing to, or received from the fund from any other source.

The Regulations provide for the expenditure of the Fund being on the basis of and limited to annual work programmes and cost estimates prepared by the fund administrator with the approval of the Board. The Regulations further provide for a seed capital of twenty million shillings (Kshs. 20,000,000) appropriated in the current financial year 2018/2019.

The Regulations also provide for objects and purpose of the Fund to include *inter alia* providing funding to support the development and promotion of sports and arts and promotion of social development including universal health care. The Regulations also require Parliament to appropriate administrative expenses to the fund which should not exceed three percent (3%) of the annual budgetary allocations of the fund.

Other matters canvassed in the Regulations include criteria for being eligible to qualify to gain from the Fund, procedures for applications to be funded, conditions and modalities for disbursement of the Fund, requirements that the Fund Administrator invests funds not immediately required for use, requirements to retain monies received and other earnings and accruals and the balance at the end of the financial year.

The Committee scrutinised the Regulations in accordance with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012, the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act (Chapter 2) which regulate the making, scrutiny and publication of the Regulations 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 the Regulations **contravene section 13(1) of the Statutory Instruments Act 2013 since they are inconsistent with the Sports Act, 2013** as they seek to establish a Fund known as the Sports, Arts and Social Development Fund. Section 12 of the Sports Act (No.25 of 2013) also establishes a Fund known as the National Sports Fund with almost similar sources of funds and functions as the ones in the Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018.

The Committee also observed that while the intended purpose of the Fund is positive for the sports sector in Kenya, **the country runs the risk of duplication between the Fund and other existing entities in the sports sector already undertaking the intended functions; hence caution should be taken to avoid duplication and wastage of public resources.**

Further, the Explanatory Memorandum submitted alongside the Regulations does not comprehensively demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act, hence 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.

Having satisfied itself that the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 contravenes the parent Act and various sections of the Statutory Instruments Act, the Committee then resolved to annul them in entirety for the reasons advanced above and those contained in section 2.4 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 **Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018.**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

1.1.1. 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.

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

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

1.2 Committee Membership

1.2.1 The Committee comprises the following Members –

1. **The Hon. Gladys Boss Shollei CBS MP** - Chairperson
2. **The Hon. Fatuma Gedi, MP** - Vice- Chairperson
3. The Hon. Waihenya Ndirangu, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Robert Mbui, MP
6. The Hon. Daniel Maanzo, MP
7. The Hon. Muriuki Njagagua, MP
8. The Hon. Timothy Wanyonyi, MP
9. The Hon. Alfred Sambu, MP
10. The Hon. Ronald Tonui, MP
11. The Hon. William Kamoti, MP
12. The Hon. William Kamket Kassait, MP
13. The Hon. Martha Wangari, MP
14. The Hon. (Dr.) Wilberforce Oundo, MP
15. The Hon. Abdi Tepo, MP
16. The Hon. George G. Murugara, MP
17. The Hon. Jennifer Shamalla, MP
18. The Hon. Munene Wambugu, MP
19. The Hon. Muturi Kigano, MP
20. The Hon. Patrick Mariru, MP
21. The Hon. Sammy Seroney, MP
22. The Hon. Gideon Mulyungi, MP
23. The Hon. Nicholas Tindi Mwale, MP

1.3 Committee Secretariat

1.3.1 The secretariat comprises of the following members of staff –

Ms. 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
Mr. Anthony Wamae	Serjeant-At-Arms
Mr. Charles Ayari	Audio Officer

2.0 CONSIDERATION OF THE INSTRUMENT

2.1 Introduction and Summary of the Regulations

- 2.1.1 In exercise of the powers conferred by **section 24(4) of the Public Finance Management Act, (No. 18 of 2012)**, the Cabinet Secretary for the National Treasury and Planning published the **Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018** on 10th August, 2018 vide LN No.174 of 2018. The Regulations were subsequently tabled before the National Assembly on 15th August, 2018 as a subsidiary legislation under the Public Finance Management Act (No. 18 of 2012). This was within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- 2.1.2 **Regulation 3** provides for the establishment of Sports, Arts & Social Development Fund with an initial capital of Kshs. 20 million appropriated by Parliament in 2018/19 financial year (**Regulation 6**).
- 2.1.3 **Regulation 4** provides for the various sources of funds for the fund including required proceeds due to the fund provided under the Betting, Lotteries and Gaming Act, required proceeds due to the fund under the Income Tax Act, monies provided by the National Assembly, grants and donations and income generated from the proceeds of the fund.
- 2.1.4 **Regulation 4(2)** provides for the apportionment of the Fund as follows;
- i. 35% for the promotion and development of sports;
 - ii. 40% for social development including Universal Health Care;
 - iii. 20% for promotion and development of arts; and
 - iv. 5% for government strategic interventions approved by the Cabinet.
- 2.1.5 **Regulation 8** provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members. The Members of the Board are the Principal Secretaries responsible for Finance, Sports, Arts, Health, Education and three (3) persons appointed by the Cabinet Secretary in charge of Sports.
- 2.1.6 **Regulation 10** provides for the functions of the Board.
- 2.1.7 **Regulation 11** provides for administration of the Fund and gives this responsibility to the Principal Secretary in charge of Sports, including the functions to be undertaken as an Administrator to the Fund.

- 2.1.8 The Regulations also provide for the CEO of the Board as well as a Secretariat to support the functions of the Board. The administrative expense of running the Fund has been capped at a maximum of 3% of the approved budget for the Fund.
- 2.1.9 **Regulation 13** provides for the funding eligibility criteria for sports organizations, professional sports persons and government implementing agency as well as the required documentations for the processing of the applications for funding.
- 2.1.10 **Regulation 15** enumerates the various conditions to be met before the disbursement of funds from the Fund.
- 2.1.11 **Regulation 22** provides for the various offences and penalties whereas **Regulation 23** makes provisions for winding up of the fund.

2.2 Purpose of the Regulations

The Regulations seek to;

- (i) specify the sources, object and purpose of the Fund including the criteria for sharing of the proceeds for development of sports, arts and health sectors;
- (ii) provide guidance on the administration and management of the Fund;
- (iii) establish the Sports, Arts and Social Development Fund governance structure, which includes the Board to advise the Cabinet Secretary for Sports and Heritage on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- (iv) set out the eligibility criteria, application procedure, allocation procedure disbursement to eligible institutions/ persons;
- (v) set out obligations of the recipients of the funds;
- (vi) gives powers to the Board to impose sanctions to implementing agencies or recipients institutions / persons in order to promote accountability and prudent use of public resources;
- (vii) review of the performance of the Fund through regular monitoring and evaluation;
- (viii) provide for the withdrawals from the Fund;
- (ix) provide for reporting of the Fund to the National Assembly; and
- (x) provide for the winding up of the Fund.

2.3 Scrutiny of the Instrument

2.3.1 The Committee considered the Regulations in conformity with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

2.4 Committee Findings

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

2.4.1 **THAT**, the Regulations were **submitted to the National Assembly within the statutory timelines** contemplated under section 11(1) of the Statutory Instruments Act;

2.4.2 **THAT**, the Regulations are contrary to section 13(1) of the Statutory Instruments Act 2013 since they are inconsistent with the Sports Act, 2013 for the following reasons:-

- i. the **Regulations seek to establish a Fund known as the Sports, Arts and Social Development Fund** with the sources of the Fund being proceeds required to be paid into the Fund under the Betting, Lotteries and Gaming Act, proceeds required to be paid into the Fund under the Income Tax Act, monies appropriated by the National Assembly, grants and donations, income generated from proceeds of the Fund and monies accruing to, or received for the fund from any other source.

Section 12 of the Sports Act (No.25 of 2013) also establishes a Fund known as the National Sports Fund with its sources being *“the proceeds of any sports lottery, taxes levied under the Betting, Lotteries and Gaming Act, investments and any other payments required by the Act to be paid into the Fund”*.

- ii. Regulation 8 provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members while Section 13 of the Sports Act also establishes a Board of Trustees to manage the Fund; and
- iii. the country also runs the risk of **duplication between the Fund and other existing entities under the Sports Act 2013**, hence caution should be taken to avoid duplication and wastage of public resources.

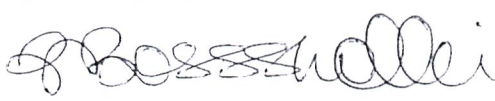
2.4.3 **THAT**, there is annexed to the Regulations, an Explanatory Memorandum which explains the extent of public participation to include some of the key stakeholders consulted being, the


Ministry of Sports and Heritage, Ministry of Health, Ministry of Interior and Coordination of National Government, relevant accounting officers of National and County Governments, the general public and international experts. **The Explanatory Memorandum does not, however, demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act**, hence 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.

2.4.4 THAT, the Regulations do not require a regulatory impact statement within the meaning of section 8 of the Statutory Instrument Act, 2013 as they do not impose significant costs to the community of part of the community.

3.0 COMMITTEE RESOLUTION

Having scrutinised the Public Finance (Sports, Arts and Social Development) Regulations, 2018 against the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2), the Committee **resolved to annul in entirety, the said Regulations, pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, for the aforementioned reasons.**

Signed.....


Date.....


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

ANNEXURES

- (i) Committee Minutes
- (ii) Sittings
- (iii) Adoption List
- (iv) Copy of the Public Finance Management (Sports, Arts And Social Development Fund)



SPECIAL ISSUE

3025

Kenya Gazette Supplement No. 109

10th August, 2018

(Legislative Supplement No. 58)

LEGAL NOTICE NO. 174

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, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

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

PART I—PRELIMINARY

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

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

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

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

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

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

PART II — ESTABLISHMENT OF THE FUND

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

4. (1) The Fund shall consist of— Sources of the Fund.

(a) all the proceeds required to be paid into the Fund under the Betting, Lotteries and Gaming Act; Cap. 131

(b) all the proceeds required to be paid into the Fund under the Income Tax Act; Cap. 470.

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

(d) grants and donations;

(e) income generated from the proceeds of the Fund; and

(f) any moneys accruing to or received by the Fund from any other source.

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

- (a) thirty five percent to the promotion and development of sports;
- (b) forty percent to social development including universal health care;
- (c) twenty percent to the promotion and development of arts; and
- (d) five percent to government strategic interventions whose expenditure shall be subject to approval by Cabinet.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

Expenditure on the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.

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

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

Capital of the Fund.

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

Objects and purpose of the Fund.

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

- (a) financing the development of sports and recreation facilities including stadia, gymnasiums, buildings, tracks;
- (b) enhancing support and access to funding for sportspersons and sports organizations to enable their participation in sporting events and competitions;
- (c) facilitation for the acquisition and provision of equipment to sports and recreation facilities;
- (d) support for the identification, nurturing and development of talent in sports and arts;
- (e) facilitation of training and capacity building programmes for persons involved in sports and recreation, creative arts, artistic production, contemporary and cultural practitioners;
- (f) facilitation for the identification, development and capacity building of technical personnel and sports support personnel involved in sports and recreation;

- (g) support for the promotion and development of artistic production of contemporary or cultural goods and services;
- (h) facilitation for the marketing and promotion of artistic productions and contemporary or cultural goods and services;
- (i) support linkages with domestic, regional and international markets for sports, artistic productions and contemporary or cultural goods and services;
- (j) facilitation for exhibition and promotion of contemporary or cultural artistic production of goods and services for national identity and pride;
- (k) financing the acquisition, development and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools;
- (l) facilitate innovation, research and documentation in arts, culture and the creative industry, sports and social development; and
- (m) promote social development including universal health care.

PART III — MANAGEMENT OF THE FUND

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

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

(2) The Board shall consist of—

- (a) the Principal Secretary for the time being responsible for matters relating to finance;
- (b) the Principal Secretary for the time being responsible for matters relating to sports;
- (c) the Principal Secretary for the time being responsible for matters relating to arts;
- (d) the Principal Secretary for the time being responsible for matters relating to health;
- (e) the Principal Secretary for the time being responsible for matters relating to education;
- (f) three other persons appointed by the Cabinet Secretary responsible for matters relating to sports.

(3) The President shall appoint one of the members appointed under Regulation 8 (2) (f) to be the chairperson of the Board.

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

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

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

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

(8) The Board shall regulate its own procedure.

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

Qualifications of members of the Advisory Board.

- (a) holds a university degree from a recognized university in Kenya;
- (b) has knowledge and experience of not less than ten years in any of the following fields—
 - (i) sports management;
 - (ii) administration;
 - (iii) finance;
 - (iv) law;
 - (v) accounting;
 - (vi) Health; or
 - (vii) economics; and
- (c) meets the requirements of Chapter Six of the Constitution.

10. The Board shall—

Functions of the Board.

- (a) provide overall oversight of the Fund;
- (b) approve the ceilings for funding under sports, arts and social development in each financial year;
- (c) develop policy guidelines relating to disbursements by the Fund;
- (d) prescribe other guidelines for the administration of the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary responsible for Sports for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the fund priorities and criteria for allocation and disbursement of funds to implementing agencies in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) facilitate and develop sectoral linkages to the Fund;

- (i) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (j) review and approve the financial statements of the Fund before submission to the Auditor-General;
- (k) review policy on the management of assets, equipment and all properties under the Fund;
- (l) receive reports on the performance of the Fund; and
- (m) undertake any other activity that in the opinion of the Board, will promote and facilitate the realization of the objects and purposes of the Fund.

(2) The Oversight Board shall prepare and submit a quarterly report to the Cabinet Secretary responsible for finance on the performance of the Fund with copies to the Cabinet Secretary responsible for sports, arts, health and education.

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

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

Administration of
the Fund.

(2) The Administrator of the Fund shall—

- (a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury in accordance with the Act;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records relating to all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, upon the approval by the Board, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Accounting Standards Board shall prescribe in accordance with the provisions of the Public Finance Management Act and Public Audit Act;
- (f) furnish additional information to the Auditor General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015;
- (g) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the

No. 18 of 2012.
No. 34 of 2015.

No. 34 of 2015.

Public Finance Management Act, 2012, and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and the Controller of Budget; and

No. 18 of 2012.

- (h) be the custodian of all the assets, equipment and properties under the Fund.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the quarter concerned.

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

Secretariat.

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

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

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

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

Funding eligibility criteria.

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

- (i) is registered under the Sports Act, 2013;
- (ii) has an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;
- (iii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and

No. 25 of 2013.

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

- (b) for a professional sports person, he or she —

- (i) has a valid license issued under the Sports Act, 2013;
- (ii) has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally; and

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

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

Application for funding.

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

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

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

- (a) in case of a sports organization—
 - (i) the certificate of registration issued under the Sports Act, 2013; No. 25 of 2013.
 - (ii) the minutes of a properly constituted meeting of the governing body of the organization containing the resolution to apply for funding from the Fund;
 - (iii) an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;
 - (iv) the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (v) a statutory declaration of programmes funded through other sources;

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

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

Fund
disbursements.

- (a) all disbursements from the Fund shall be approved and recorded in minutes of the Board;
- ~~(b) disbursements from the Fund shall be to support the objects and purpose of this Fund;~~
- (c) transfers to defray the expenses in respect of the administration of the Fund shall be as approved by the Board for the respective financial year;

(d) the Board shall set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(2) A recipient shall—

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

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

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

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

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

16. The Administrator may, with the approval of the Board, invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Public Finance Management Act, 2012.

Investment of funds.

No. 18 of 2012.

17. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Retention of receipts.

18. Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.

Application of Government regulations and procedures.

19. The Administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and in preparing the work plan, projects and quarterly reports and ensure the work plan, projects and quarterly reports—

Preparation and submission of work plans, etc.

- (a) contain information on the financial and non-financial performance of the Fund; and
- (b) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

20. The work plans, projects, procurement plans and quarterly reports shall be prepared by the Administrator of the Fund before submission to the Board for approval.

Approval of reports.

21. (1) The Administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act, 2012 and as may be prescribed from time to time by the Accounting Standards Board. Annual reports.

(2) In addition, the Administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under paragraph (1).

(3) The annual financial and non-financial statements under paragraph (1) shall be approved by the Board and submitted to the Auditor General for audit within three months after the end of the financial year in accordance with the Public Audit Act, 2015 and a copy thereof submitted to the Cabinet Secretary responsible for finance, Cabinet Secretary responsible for sports and arts and Cabinet Secretary responsible for health.

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

23. (1) In the event of winding up of the Fund, the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to sports. Winding-up of the Fund.

(2) The administrator of the Fund shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund and submit the financial and non-financial reports to the Auditor General for audit with a copy to the National Treasury.

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

Made on the 23rd July, 2018.

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

LEGAL NOTICE NO. 175

THE EXPORT PROCESSING ZONES ACT

(Cap. 517)

DECLARATION OF EXPORT PROCESSING ZONE

IN EXERCISE of the powers conferred by section 15 (1) of the Export Processing Zones Act, the Cabinet Secretary for Industry, Trade and Co-operatives declares the parcel of land specified in the Schedule hereto to be an export processing zone.

SCHEDULE

All that piece of land being Title No. Ngandori/Kirigi/3925 measuring approximately 1.21 Hectares or thereabout situated in Embu County.

Dated the 13th July, 2018.

ADAN MOHAMED,
Cabinet Secretary for Industry, Trade and Co-operatives.

LEGAL NOTICE NO. 176

THE EXPORT PROCESSING ZONES ACT

(Cap. 517)

DECLARATION OF EXPORT PROCESSING ZONE

IN EXERCISE of the powers conferred by section 15 (1) of the Export Processing Zones Act, the Cabinet Secretary for Industry, Trade and Co-operatives declares the parcels of land specified in the Schedule hereto to be export processing zones.

SCHEDULE

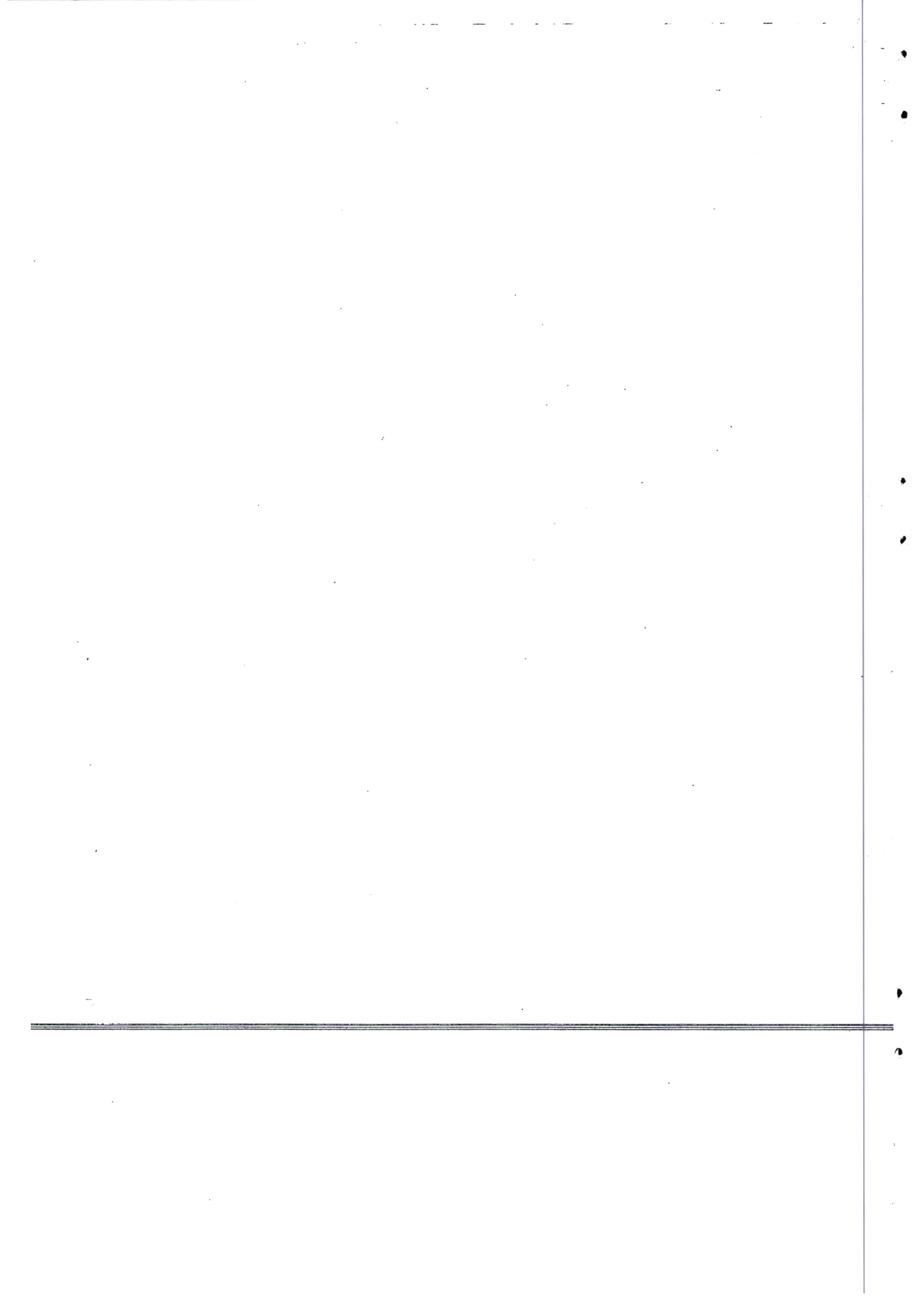
All that parcel of land being Certificate of Lease No. Kwale/Shimoni/719 measuring approximately 1.31 Hectares or thereabout situated in Kwale County.

All that parcel of land being Certificate of Lease No. Kwale/Shimoni/783 measuring approximately 2.6 Hectares or thereabout situated in Kwale County.

All that parcel of land being Certificate of Lease No. Kwale/Shimoni/403 measuring approximately 5.37 Hectares or thereabout situated in Kwale County..

Dated the 12th July, 2018.

ADAN MOHAMED,
Cabinet Secretary for Industry, Trade and Co-operatives.



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

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PART I

1. Name of the Statutory Instrument: Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018.
2. Name of the Parent Act: Public Finance Management Act, 2012. Enacted Pursuant to Section 24 (4) of the Public Finance Management Act, 2012
3. Name of the Ministry/ Department: The National Treasury

PART II

4. **The Purpose of Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018.**

The purpose of these Regulations is to:

- (i) specify the sources, object and purpose of the Fund including the criteria for sharing of the proceeds for development of sports, arts and health sectors;
- (ii) provide guidance on the administration and management of the Fund;
- (iii) establish the Sports, arts and Social Development Fund Governance structure, which includes the Board to advise the Cabinet Secretary for Sports and Heritage on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- (iv) to set out the eligibility criteria , application procedure, allocation procedure, disbursements to eligible institutions / persons /;
- (v) set out obligations of the recipients of the funds from the Fund;

- (vi) give powers to the Board to impose sanctions to implementing agencies or recipient institutions / persons in order to promote accountability and prudent use of public resources;
- (vii) review of the performance of the Fund through regular monitoring and evaluation;
- (viii) provide for the withdrawals from the Fund;
- (ix) provide for reporting of the Fund to the National Assembly; and
- (x) provide for the winding up of the Fund.

5. **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.

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

6. **Policy Background.**

The critical role that Sports, Arts and Social Development (Universal Health Care) play in the nation's socio-economic development, employment creation and contribution to growth of Gross Domestic Product (GDP), is well recognized in Kenya's economic blueprint, the Vision 2030.

However, the current approach to supporting, financing and developing sports and arts does not comprehensively facilitate identification, nurturing and development of talents. Further, the Government has identified Social Development (Universal Health Care) as one of the Big Four agenda for supporting, financing and developing this sector. ~~Currently, the Ministry of Sports and Heritage is responsible for sports and arts, while the Ministry of Health is responsible Universal Health Care.~~

Kenya remains a powerhouse in sporting and artistic activities globally, which requires to be nurtured and developed for the Government to reap full benefits from sports and artistic talents in the socio-economic development of the country. Further, Kenya is endowed with a rich and

diverse sports and cultural heritage whose expressions give rise to a diversity of cultures and creative industries. The rise of the digital economy and the increasing commercialization of sports, arts, culture and other social activities create opportunities for the country to exploit the latent economic potential inherent in them.

The Government remains committed to support reforms in the sports and arts sector. Accordingly, there is need to deepen these reforms further given the increasing expansion of global market for sports, culture and creative arts industry. The economic contribution of sports, culture and creative arts industries in Kenya has not realized its full potential

In addition, during the inauguration of His Excellency the President, the Government committed to achieve 100 percent Universal Health Care in Kenya by 2022. In order to support this reform, there is need to mobilize resources, including financing of the Universal Health Care. In this regard, the proposed Fund comes in handy to support realization of this agenda.

Over the recent past, the Government has been supporting expansion of sports, arts, culture and social development (Universal Health Care). While these initiatives have recorded significant socio-economic impact, they have also faced challenges including:-

- (i) lack of a comprehensive approach to support the sports and arts activities;
- (ii) inadequate support to the targeted groups;
- (iii) governance challenges in the management of sports and arts sector;
- (iv) lack of a comprehensive approach to identify, nurture and develop talent; and ‘
- (v) lack of adequate funding for universal health care.

The principal objective of establishing the Fund is to provide sustainable financing to sports persons, artist and cultural practitioners involved in sports, artistic production and social development programmes including universal health care. This will enhance participation of talented Kenyans, contemporary artist and cultural practitioners in creation of jobs and general economic development.

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

- i. providing reliable and sustainable funding to sports organizations, professional sports persons, contemporary artists, cultural practitioners and Universal Health Care;

- ii. enabling sports persons, contemporary artists and cultural practitioners access high quality facilities and opportunities;
- iii. ensuring sports persons, contemporary artists and cultural practitioners have access to professional support and services;
- iv. afford sports persons, contemporary artists and cultural practitioners a conducive environment;
- v. development of professional coaches and mentors for talent identification, nurturing and development; and
- vi. promoting diversity and cohesion through sports and arts.

It is under this conviction that the proposed Fund is proposed to be established and receive tax proceeds from lotteries, gaming, betting, competitions and winnings as the proposed major sources of funding.

7. Public Consultations

Extensive consultations were done while preparing the Public Finance Management (Sports, arts and Social Development 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 Sports and Heritage, Ministry of Health, Ministry of Interior and Coordination of National Government, relevant Accounting Officers of national and county governments, the general public as well as international experts among others.

Different stakeholders had different views especially on the mode of access to the Sports, Arts and Social Development Fund. The National Government therefore made a deliberate choice to finance existing institutions to leverage on existing capacities to 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 targeted sectors in Kenya.

8. 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 Sports, Arts and Social Development Fund resources, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

9. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the rejuvenated growth of the targeted sectors, the jobs created as a result of well financed sports and arts and increased coverage of universal health care).

10. **Review of the performance of the Sports, Arts and Social Development Fund.**

The National Treasury shall monitor the application of the Sports, Arts and Social Development Fund resources. This will be done through quarterly reports sent by the relevant accounting officers of the national government. In addition, the Fund Secretariat will also carry out regular monitoring and evaluation of the specific programmes, projects, and initiatives funded through the Sports, Arts and Social Development Fund.

11. **National Treasury Contact Person.**

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

HENRY ROTICH
CABINET SECRETARY TO THE NATIONAL TREASURY & PLANNING

Date.....


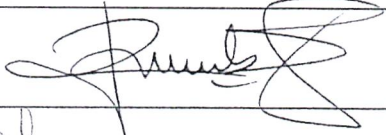
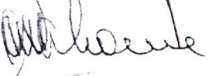
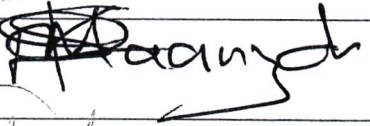



COMMITTEE ON DELEGATED LEGISLATION


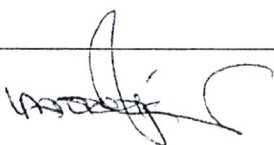



ADOPTION LIST

REPORT ON THE ADOPTION OF THE REPORT ON THE PUBLIC FINANCE
MANAGEMENT (SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND)
REGULATIONS, 2018

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

DATE: 16/10/2018

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

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

MINUTES OF THE 56TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 11TH OCTOBER, 2018, AT 11.30 A.M. IN COMMITTEE ROOM NO.12, MAIN PARLIAMENT BUILDINGS

PRESENT

The Hon. Gladys Boss Shollei CBS MP - **Chairperson**
The Hon. Daniel Maanzo, MP
The Hon. William Kamket Kassait, MP
The Hon. Munene Wambugu, MP
The Hon. William Kamoti, MP
The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

The Hon. Fatuma Gedi, MP - **Vice Chairperson**
The Hon. George Gitonga Murugara, MP
The Hon. Patrick Kariuki Mariru, MP
The Hon. Robert Mbui, MP
The Hon. Timothy Wanyonyi, MP
The Hon. (Dr.) Wilberforce Oundo, MP
The Hon. Jennifer Shamalla, MP
The Hon. Martha Wangari, MP
The Hon. Ronald Kiprotich Tonui, MP
The Hon. Alice Wahome, MP
The Hon. Isaac Waihenya Ndirangu, MP
The Hon. Charles Gimose, MP
The Hon. Muriuki Njagagua, MP
The Hon. Muturi Kigano, MP
The Hon. Abdi Koropu Tepo, MP
The 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 and Policy Analyst
Mr. Josphat Motonu - Fiscal Analyst
Mr. Anthony Wamae - Serjeant-at-Arms

MIN.NO. /NA/CDL/2018/315

PRELIMINARIES

The meeting was called to order at forty minutes past eleven o'clock followed by Prayer and preliminary remarks by the Chairperson.

MIN.NO. /NA/CDL/2018/316

CONFIRMATION OF MINUTES

Minutes of the 51st sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Daniel Maanzo, MP respectively.

Minutes of the 52nd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. William Kamoti, MP respectively.

Minutes of the 53rd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Munene Wambugu, MP and Hon. Sammy Seroney, MP, respectively.

Minutes of the 54th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Munene Wambugu, MP and Hon. William Kamoti, MP respectively.

Minutes of the 55th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Munene Wambugu, MP respectively.

MIN.NO. /NA/CDL/2018/317

MATTERS ARISING

No matters arose

MIN.NO. /NA/CDL/2018/318

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

The Chairperson informed the Committee that the Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018 were laid before the National Assembly on 15th August, 2018 as a subsidiary legislation under the Public Finance Management Act (No. 18 of 2012 and committed to the Committee for consideration.

The chairperson then welcomed the Fiscal Analyst from the Parliamentary Budget Office to brief members on the Regulations. He informed the committee on the analysis of the Public Finance Management (Sports, Arts and Social Development Fund) regulations, 2018.

Brief overview

The Legal Notice Number 174 was issued in accordance with the provisions of the Public Finance Management Act 2012, which gives the Cabinet Secretary in charge of the National Treasury powers to create a public fund with the approval of the National Assembly.

The proposed regulations provide for establishment and operations of sports, arts and social development fund whose objective is to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. Regulation 7(2) enumerates the specifics on where the funds will be applied in order to achieve the intended objective.

The Fiscal Analyst further informed the meeting the following:-

The proposed regulations provide for establishment of Sports, Arts & Social Development Fund (Regulation 3) with an initial capital of KSh 20 million appropriated by Parliament in 2018/19 financial year (regulation 6).

Regulation 4 provide the various sources of funds for the fund including required proceeds due to the fund provided under the Betting, Lotteries and gaming Act, required proceeds due to the fund under the Income Tax Act, moneys provided by the National Assembly ,grants and donations and income generated from the proceeds of the fund.

Regulation 4(2) provides for the apportionment of the fund as follows;

- i. 35%-promotion and development of sports
- ii. 40%-social development including Universal Health Care
- iii. 20%-promotion and development of arts
- iv. 5%-government strategic interventions approved by the Cabinet

Regulation 8 provide for the management of the fund where a Sports, Arts and Social Development Fund oversight Board consisting of eight (8) members. The Members of the Board are the Principal Secretaries responsible for Finance, Sports, Arts, Health, Education and three (3) persons appointed by the Cabinet Secretary in charge of Sports.

The functions of the Board are enumerated under regulation 10. In terms of administration of the fund, the regulations (regulation 11) gives this responsibility to the Principal Secretary in charge of Sports including the functions to be undertaken as an Administrator to the Fund.

The regulations also provide for the CEO of the Board as well as a Secretariat to support the functions of the Board. The administrative expense of running the fund has been capped at a maximum of 3% of the approved budget for the fund.

Regulations 13 provides for the funding eligibility criteria for sports organizations, professional sports person and government implementing agency as well as the required documentations for the processing of the applications for funding.

Regulation 15 enumerates the various conditions to be met before the disbursement of funds from the fund. Regulation 22 provides for the various offences and penalties whereas regulation 23 makes provisions for winding of the fund.

The Committee was also notified on the Salient Issues as follows:

- i. The aim of the proposed regulations is to provide for establishment and operations of sports, arts and social development fund whose objective is to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. However, these regulations do not seem to be anchored on legislation. The Sports, Arts and Social Development Fund proposed to be established here appears to be different from the National Sports Fund established by the Sports Act, 2013.
- ii. The regulations provide for the establishment of an eight (8) member oversight Board with a Secretariat. This provision has financial implications since this Board and the Secretariat has to incur expenditures. Such a provision should be introduced through legislation so as it undergoes the usual assessment in view of Article 114 of the Constitution.

He further concluded that the aim of the proposed regulations was to provide for establishment and operations of sports, arts and social development fund whose objective was to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. However, there were some aspects that ought to be addressed by the substantive legislation such as the establishment of the Oversight Board with a Secretariat that may require assessment of Article 114 of the Constitution.

The Chairperson then welcomed the Legal Counsel to brief Members on the Rules. He informed the Committee THAT:

- (i) In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, (No. 18 of 2012), the Cabinet Secretary for the National Treasury and Planning published the Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018 on 10th August, 2018 vide LN No.174 of 2018. The Regulations were subsequently tabled before the House being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- (ii) Regulation 3 provides for the establishment of Sports, Arts & Social Development Fund with an initial capital of Kshs. 20 million appropriated by Parliament in 2018/19 financial year (Regulation 6).
- (iii) Regulation 4 provides for the various sources of funds for the fund including required proceeds due to the fund provided under the Betting, Lotteries and Gaming Act, required proceeds due to the fund under the Income Tax Act, monies provided by the National Assembly, grants and donations and income generated from the proceeds of the fund.

The Legal Counsel further informed the meeting that Regulation 4(2) provides for the apportionment of the Fund as follows;

- i. 35% for the promotion and development of sports;
 - ii. 40% for social development including Universal Health Care;
 - iii. 20% for promotion and development of arts; and
 - iv. 5% for government strategic interventions approved by the Cabinet.
- (iv) Regulation 8 provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members. The Members of the Board are the Principal Secretaries responsible for Finance, Sports, Arts, Health, Education and three (3) persons appointed by the Cabinet Secretary in charge of Sports.
 - (v) Regulation 10 provides for the functions of the Board.
 - (vi) Regulation 11 provides for administration of the Fund and gives this responsibility to the Principal Secretary in charge of Sports, including the functions to be undertaken as an Administrator to the Fund.
 - (vii) The Regulations also provide for the CEO of the Board as well as a Secretariat to support the functions of the Board. The administrative expense of running the Fund has been capped at a maximum of 3% of the approved budget for the Fund.

- (viii) Regulation 13 provides for the funding eligibility criteria for sports organizations, professional sports persons and government implementing agency as well as the required documentations for the processing of the applications for funding.
- (ix) Regulation 15 enumerates the various conditions to be met before the disbursement of funds from the Fund.
- (x) Regulation 22 provides for the various offences and penalties whereas Regulation 23 makes provisions for winding up of the fund.

The Committee was further informed about the purpose of the Regulations and what it intend to seek:-

- 1) specify the sources, object and purpose of the Fund including the criteria for sharing of the proceeds for development of sports, arts and health sectors;
- 2) provide guidance on the administration and management of the Fund;
- 3) establish the Sports, Arts and Social Development Fund governance structure, which includes the Board to advice the Cabinet Secretary for Sports and Heritage on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- 4) set out the eligibility criteria, application procedure, allocation procedure disbursement to eligible institutions/persons;
- 5) set out obligations of the recipients of the funds;
- 6) gives powers to the Board to impose sanctions to implementing agencies or recipients institutions/persons in order to promote accountability and prudent use of public resources;
- 7) review of the performance of the Fund through regular monitoring and evaluation;
- 8) provide for the withdrawals from the Fund;
- 9) provide for reporting of the Fund to the National Assembly; and
- 10) Provide for the winding up of the Fund.

Committee Observations

The Committee made the following observations:-The Committee considered the Regulations in conformity with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General

Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

Committee Findings

Following comprehensive scrutiny of the Regulations, the Committee made the following findings:-

THAT, the Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act;

THAT, the Regulations are contrary to section 13(1) of the Statutory Instruments Act 2013 since they are inconsistent with the Sports Act, 2013 for the following reasons:-

- i. the Regulations seek to establish a Fund known as the Sports, Arts and Social Development Fund with the sources of the Fund being proceeds required to be paid into the Fund under the Betting, Lotteries and Gaming Act, proceeds required to be paid into the Fund under the Income Tax Act, monies appropriated by the National Assembly, grants and donations, income generated from proceeds of the Fund and monies accruing to, or received for the fund from any other source.

Section 12 of the Sports Act (No.25 of 2013) also establishes a Fund known as the National Sports Fund with its sources being "*the proceeds of any sports lottery, taxes levied under the Betting, Lotteries and Gaming Act, investments and any other payments required by the Act to be paid into the Fund*".

- ii. Regulation 8 provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members while Section 13 of the Sports Act also establishes a Board of Trustees to manage the Fund; and
- iii. the country also runs the risk of duplication between the Fund and other existing entities under the Sports Act 2013, hence caution should be taken to avoid duplication and wastage of public resources.

THAT, there is annexed to the Regulations, an Explanatory Memorandum which explains the extent of public participation to include some of the key stakeholders consulted being, the Ministry of Sports and Heritage, Ministry of Health, Ministry of Interior and Coordination of National Government, relevant accounting officers of National and County Governments, the general public and international experts. The Explanatory Memorandum does not, however,

demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act, hence 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.

THAT, the Regulations do not require a regulatory impact statement within the meaning of section 8 of the Statutory Instrument Act, 2013 as they do not impose significant costs to the community of part of the community.

COMMITTEE RESOLUTION

Having scrutinised the Public Finance (Sports, Arts and Social Development) Regulations, 2018 against the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2), the Committee **resolved to annul in entirety, the said Regulations, pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, for the aforementioned reasons.**

MIN.NO. /NA/CDL/2018/319 CONSIDERATION OF THE JUDICIARY FUND) REGULATIONS, 2018

The Fiscal Analyst informed the committee on the analysis of the Judiciary Fund Regulations, 2018.

Brief overview

The Judiciary Fund Regulations, 2018 was issued in accordance with the provisions of the Judiciary Fund Act, 2016. Section 14 of the Judiciary Act gives the Chief Justice in consultation with the Judiciary Registrar power to make regulations for proper management of the Judiciary Fund created by the Act.

The regulations provide for management and operations of Judiciary Fund to ensure accountability and transparency in use of resources in the Judiciary among other desired tenets of public finance management. The objective of the Judiciary Fund as provided in the Judiciary Fund Act, 2016 is to safeguard the functional and operational independence of Judiciary, ensure accountability of resources allocated to Judiciary as well as ensure the Judiciary has adequate resources for its operations.

Summary of the provisions

The regulation has various provisions for management and operations of the Judiciary Fund.

Part I of the regulations provides for the objects and purpose of the funds; source of funds which include money appropriated by the National Assembly; revenue collection by Judiciary which include fees, fine and forfeitures.

Part II of the regulations outlines the procedures for preparation of budget estimates including supplementary estimates as well as provisions for reallocation of funds within programmes and sub votes within a financial year.

Part III of the regulations has provisions for utilization of the funds in the Judiciary which includes provisions on authorization of expenditure, payment of goods and services, preparation of budgetary expenditure reports.

Part IV and V of the regulations have provisions for expenditure in relation to human resources in the Judiciary and establishment and management of imprest respectively.

Part VI provides the procedures for Accounts and reporting whereas part VII provide for internal Audit of the fund as well as risk management.

Salient issues

- i. Under Section 4 of the Judiciary Fund Act, 2016, fines and forfeitures have not been highlighted as part of the sources of funds to the Judiciary fund. However, Paragraph 6 of these regulations provides for the revenues to the Judiciary Fund as fees, miscellaneous receipts as well as fines and forfeitures. Therefore, this is a substantive matter that may require legislation since diverting these revenues from the Consolidated Fund to the Judiciary Fund shall require the assessment of the implication according to Article 114 of the Constitution.
- ii. Regulation 13 provides for the fund retaining any moneys that have not been utilized at the close of the financial year. This provision is also provided in the Principal Act. The Constitution and the Public Finance Management Act, 2012 provides for the submission of the Judiciary Estimates to the National Assembly for approval. The best practice is that of lapsing of appropriation and seeking re-appropriation for the new fiscal year. For the

public Funds that retain their accruals are either the special purposes or the self-sustaining ones such as the Equalization Fund and the Kenya Airports Authority Fund respectively.

- iii. Regulation 27 provides for submission of bank accounts held by the fund to the National Treasury by the Chief Registrar. The Bank account details also need to be provided to the Controller of Budget who authorizes withdrawal of funds and the Auditor General whose function is to audit all government institutions.

On conclusion the Fiscal Analyst noted that the regulations provide for management and operations of Judiciary Fund to ensure accountability and transparency in use of resources in line with the public finance management principles. However, the regulations seem to introduce substantive matters that may need to be addressed by the main legislation as opposed to the subsidiary legislation.

The Committee was informed that a comprehensive brief by the Legal Counsel was not ready but he noted the following:-

In exercise of the powers conferred by **Section 14(1) of the Judiciary Fund Act, (No. 16 of 2016)** the Chief Justice published the Judiciary Fund Regulations, 2018 on 31st May, 2018 **vide LN No.117/2018** as a subsidiary legislation under the Judiciary Fund Act, (No. 16 of 2016).

The Judiciary Fund Regulations, 2018 were tabled before the National Assembly on 7th August, 2018. This was **contrary to the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**

Article 173 of the Constitution of Kenya, 2010 establishes the Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary. Further, Article 173(5) provides that Parliament shall enact legislation to provide for the regulation of the Fund. Pursuant to this provision, the Judiciary Fund Act, (No. 16 of 2016) was enacted.

The Regulations were **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 of the SI Act.

The scrutiny was undertaken in conformity with the Constitution of Kenya, the Judiciary Fund Act, (No. 16 of 2016), the Public Finance Management Act, (No. 18 of 2012), the Statutory

Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

Purpose of the Regulations

The Regulations seek to;

- i) provide for the proper management of the Fund;
- ii) set out a standardized financial management system of the Fund capable of producing accurate and reliable accounts, which will be useful in management decisions and statutory reporting;
- iii) ensure accountability, transparency and the effective, efficient and economic use of the Fund; and
- iv) Ensure adherence to the principles of public finance set out in Article 201 of the Constitution in the management of the Fund.

The sources of the Fund comprise;

- i) such monies as may be appropriated by the National Assembly out of the Consolidated Fund;
- ii) any grants, gifts, donations or bequests;
- iii) such monies as may be allocated for that purposes from investments, fees or levies administered by the Judiciary; and
- iv) moneys accruing to or received by the Judiciary from any other source.

Regulation 6 provides that revenue collected by the Judiciary includes fees, fines and forfeiture and miscellaneous receipts.

The expected benefit of the regulations was to provide for management and operations of the Judiciary Fund to ensure accountability and transparency in use of resources in line with the public finance management principles.

Committee Findings

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

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.

2. **THAT, under Section 4 of the Judiciary Fund Act, 2016**, fines and forfeitures have not been highlighted as part of the sources of funds to the Judiciary fund. However, Regulation 6 of the Judiciary Fund Regulations, 2018 provides for the **revenues to the Judiciary Fund as fees, miscellaneous receipts as well as fines and forfeitures**. Therefore, this is a substantive matter that may require legislation since diverting these revenues from the Consolidated Fund to the Judiciary Fund shall require the assessment of the implication according to Article 114 of the Constitution on Money Bills. Regulation 6 therefore contravenes the parent Act.
3. **THAT, Regulation 13 provides for the fund retaining any moneys that have not been utilized** at the close of the financial year. This provision is also provided in the Parent Act under Section 7 of the Judiciary Fund Act, 2016. The Constitution and the Public Finance Management Act, 2012 provides for the submission of the Judiciary Estimates to the National Assembly for approval. The best practice is that on lapsing of appropriation the entity seeks re-appropriation for the new fiscal year. Public Funds that retain their accruals are either the special purposes or the self-sustaining ones such as the Equalization Fund and the Kenya Airports Authority Fund respectively.
4. **THAT, Regulation 27** provides for submission of bank accounts held by the fund to the National Treasury by the Chief Registrar. However, the Bank account details also need to be provided to the Controller of Budget who authorizes withdrawal of funds and the Auditor General whose function is to audit all government institutions as provided for in the Constitution and the Public Finance Management Act, 2012.

COMMITTEE RESOLUTION

Having listened to the presentation the Committee resolved to meet on Tuesday 16th October 2018 to make final decision on the Judiciary Fund Regulations, 2018.

MIN.NO../NA/CDL/2018/320 REQUEST FOR EXTENSION OF TEA & SUGAR REGULATIONS

The Committee was informed that the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation vide a letter dated 22nd August, 2018 prepared and forwarded to the Clerk of the National Assembly two sets of Regulations to be considered by the Committee on Delegated Legislation. The meeting was notified that the Cabinet Secretary was consulting the committee pursuant to section 21(2) of the Statutory Instruments Act for purposes of extending the operations of the Regulations for twelve months. The Regulations among others were two sets:-

Tea (Licensing, Registration and Trade) Regulations, 2008 and the Sugar (Imports, Exports and By-products) Regulations 2008 which were published in 2008 long before the enactment of the Statutory Instruments Act.

The Committee further directed the secretariat to get a detailed explanation regarding Request for Extension of all other Regulations which its time had lapsed. It was further noted that all Regulatory making authorities need to comply with the House Resolution.

MIN.NO. /NA/CDL/2018/321 ANY OTHER BUSINESS

The Committee discussed the following issues:-

1. NEMA Regulations

The meeting was notified on an invitation letter by the National Environment Management Authority (NEMA) requesting to meet the Committee in a retreat. The Committee therefore resolved to undertake the retreat with the Authority (NEMA) to consider the draft Regulations and hoped that they will discuss these Regulations comprehensively and be able to deal with issues arising. The Regulations are as follows:-

1. Draft Environmental (Strategic Assessment, Integrated Impact Assessment and Environmental Audit) Regulations, 2018
2. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2017
3. The Environment Management and Coordination (Conservation and Management of Wetlands) Regulations, 2017
4. The Environmental Management and Coordination (Electrical Electronic Waste Management) Regulations, 2016

The Committee, however, resolved that the activity be undertaken from Thursday, 1st to Sunday 4th November, 2018 in Mombasa, and not Naivasha as per the invitation.

2. FOREIGN Visits

On foreign visits, the Committee was informed that the Delegation to the Global Aviation Security Symposium & Second High Level Conference, Montreal, Canada (23 November – 1 December 2018) was on course and Members will be updated on the progress in the subsequent meetings.

MIN.NO. /NA/CDL/2018/322 ADJOURNMENT

There being no other business, the meeting was adjourned at 1.20 pm. The next meeting will be called on notice.

Signed: 

Date: 16th October, 2018

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

