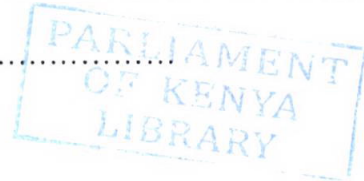




*Paper laid on
24/3/15 by Hon. A.
Dnake, MP
Leader of the
Opposition*

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS HOUSE MORTGAGE SCHEME FUND) REGULATIONS, 2015



1. PURPOSE OF THE REGULATIONS

The Salaries and Remuneration Commission set a house mortgage benefit for all State Officers. The National Treasury is expected to operationalize the same for State Officers in the National Government (except the Judiciary and Parliament), through the State Officers House Mortgage Scheme Fund. The purpose of these Regulations are twofold to establish the State Officers Housing Scheme Fund, and to set up a clear framework for managing the mortgage scheme.

The objective and purpose for which the Fund is established shall be to provide a loan scheme for the purchase or development of property by the State Officers.

2. THE POLICY AND LEGISLATIVE CONTEXT

Article 230 of the Constitution of Kenya, 2010, sets up the Salaries and Remuneration Commission, with a clear mandate of setting and regularly reviewing the remuneration and benefits of all State Officers. The House Mortgage Scheme is one of the benefits that have been set. The Scheme for State Officers only exists in the Judiciary and Parliament, and not in the Executive.

Section 24(4) of the Public Finance Management Act (PFMA), 2012 allows the Cabinet Secretary for the National Treasury to establish a Public Fund. These Regulations, are therefore firmly anchored in the provisions of the Public Finance Management Act, 2012.

3. SALIENT FEATURES OF THE REGULATIONS

Some of the salient features of the regulations are:-

- The objective and purpose for which the State Officers House Mortgage Scheme Fund is established shall be to provide a loan scheme for the purchase or development of property by the State Officers;
- The capital of the fund shall consist of the initial capital of one billion shillings appropriated by Parliament in the 2014/2015 financial year and such other funds as may be voted for the purposes of the Fund in subsequent financial years;
- The Fund will be managed by an Advisory Committee established within the National Treasury;

- The Cabinet Secretary may appoint a committee or board of an existing house mortgage scheme fund in the public service to manage the State Officers House Mortgage Scheme Fund;
- A loan granted by the fund shall be solely utilized for the purchase or development of residential property for the occupation of the borrower or equity release for improvement of the residential house;
- A loan granted shall be funded at the rate of ninety percent of the value of the property but shall not exceed the maximum loan threshold set in the Schedule and this shall be based on the ability to pay, and repaid by check off system;
- The loan shall be repaid within a period of twenty years or before the borrower attains the age of seventy years whichever is the earlier;
- A state officer who is appointed at the age of seventy years or above shall be required to repay the loan for the duration of the state officer's appointment;
- The interest payable on a loan shall be at the rate of at least three per centum per annum on a monthly reducing balance or such other rate as may from time to time be determined by the committee;
- The interest charged shall be paid by the borrower;
- The Fund shall register a charge on any property financed through a loan granted under these Regulations
- A borrower shall take and maintain a life insurance policy and a fire insurance policy with an insurance company approved by the committee, the cost of which shall be paid out of the Fund and debited in the borrower's account;
- Where a borrower defaults in the repayment of the loan for a period of three consecutive months, the advisory committee, shall reposes and sell the property to another deserving state officer;
- Where a borrower ceases to be a state officer before full loan repayment, the advisory committee may, in its discretion, allow the borrower to continue to repay the loan on the same terms as set out in the Regulations provided that when the borrower defaults in a period of four months the outstanding loan shall revert to prevailing commercial interest rate;
- Where the commercial rate is applicable, and the borrower is in default for a period of four months, the Fund may call in the loan and sell the charged property by public auction or public treaty;
- The Advisory Committee may approve the appointment of a tenant purchase institution or a mortgage finance company to administer the Fund;
- The Scheme may also enter into viable management partnership with a scheme from any other public body; and
- The Fund or, where applicable, the tenant purchase institution or mortgage finance company may charge an interest of not more than two per centum per annum of the value of the loan to cover its management costs.

4. PUBLIC PARTICIPATION

The Salaries and Remuneration Commission consulted the public before setting the remuneration and benefits for State Officers.

5. GUIDANCE

The National Treasury will guide the State Officers in the National Government on how to access the house mortgage facility.

6. REVIEW OF THE REGULATIONS

The Advisory Committee may from time to time in consultation with the Salaries and Remuneration Commission recommend to the Cabinet Secretary any amendment to these Regulations.

7. NATIONAL TREASURY CONTACT PERSON.

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

Date.....20th March.....2015


HENRY ROTICH
CABINET SECRETARY FOR THE NATIONAL TREASURY

LEGAL NOTICE NO. 23

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 makes the following Regulations:

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS HOUSE MORTGAGE SCHEME FUND) REGULATIONS, 2015

1. These Regulations may be cited as the Public Finance Management (State Officers House Mortgage Scheme Fund) Regulations, 2015.

Citation and commencement.

2. In these Regulations, unless the context otherwise requires

“borrower” means a person in receipt of a loan out of the Fund;

“state officer” shall have the meaning ascribed in Article 260 of the Constitution and shall not include a state officer who is covered by any public housing mortgage scheme;

“equity release” means a loan that allows the home owner to access equity in his or her home without having to sell it for purposes of improving it;

“committee” means the Advisory Committee of the Fund established under regulation 6 of these Regulations;

“financial year” means a period of twelve months ending on the 30th June of each year;

“Fund” means the State Officers House Mortgage Scheme Fund established under regulation 3 of these Regulations;

“mortgage finance company” has the meaning assigned to it under section 2 of the Banking Act;

“officer administering the Fund” means a person designated as such under section 24(5) of the Public Finance Management Act; and

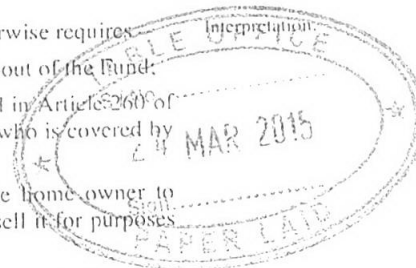
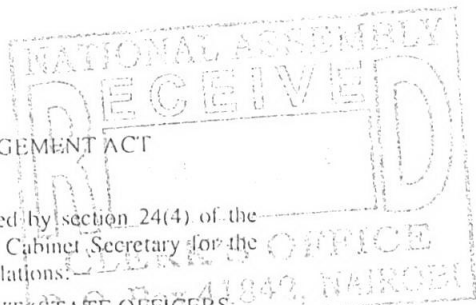
“tenant purchase institution” means a company incorporated in Kenya which has not less than twenty years experience in operation of tenant purchase loan schemes for over two thousand housing units at one moment.

3. There is hereby established a fund to be known as the State Officers House Mortgage Scheme Fund.

Establishment of the Fund.

4. The objective and purpose for which the Fund is established shall be to provide a loan scheme for the purchase or development of property by the State Officers.

Objects and purpose of the Fund.



5. (1) The capital of the fund shall consist of the initial capital of one billion shillings appropriated by Parliament in the 2014/2015 financial year and such other funds as may be voted for the purposes of the Fund in subsequent financial years.

Capital of the Fund.

(2) All monies that shall be paid into the account operated by the officer administering the Fund.

6. (1) There is established an Advisory Committee of the Fund within the National Treasury which shall consist of the—

Advisory Committee of the Fund.

- (a) Director of Administration;
- (b) Director of Budgetary Supply;
- (c) Director of Human Resources; and
- (d) Director of Fiscal Decentralization.

(2) The functions of the Advisory Committee of the Fund shall be to—

- (a) approve all housing development and financing proposals;
- (b) approve criteria for the beneficiaries of the Fund; and
- (c) such other duty as may be directed by the Cabinet Secretary for the purposes of the proper management of the Fund.

(3) The advisory committee shall meet at least four times in a year.

(4) The officer administering the Fund shall be the Secretary of the committee.

(5) The members of the committee shall elect a chairman from amongst themselves.

(6) The quorum for a meeting of the committee shall be the chairman and two other members.

(7) The chairman shall convene and preside at meetings of the committee and in the absence of the chairman, by a member of the committee, elected by other members present in the meeting.

(8) The decision of the committee shall be by simple majority and in the case of a tie, the chairman shall have a casting vote.

7. (1) Notwithstanding paragraph 6 (1), the Cabinet Secretary may appoint a committee or board of an existing house mortgage scheme fund in the public service to manage the State Officers House Mortgage Scheme Fund.

Management of the Fund and Scheme.

(2) The committee or board in sub-paragraph (1) shall be deemed to have taken the role of the Advisory Committee.

(3) The committee or board appointed under paragraph 7(1), shall conduct its affairs under the Public Finance Management (State Officers House Mortgage Scheme Fund) Regulations, 2015 to manage the scheme.

9. (1) A loan granted to a state officer who is in possession of a title deed to the land on which the development is to be carried out, shall be at the discretion of the Committee.

Dist.
of the
debt

(2) The first disbursement shall be based on twenty five per cent of the cost of construction.

Provided that the cost of construction shall not exceed the maximum funding due to the borrower under these Regulations or twice the open market value of the land on which the residential property is proposed to be constructed, whichever is less.

(3) A loan granted under these Regulations shall be funded at the rate of ninety percent of the value of the property but shall not exceed the maximum loan threshold set in the Schedule and this shall be based on the ability to pay, and repaid by check off system.

(4) The subsequent disbursements shall be based on the rate of completion of the various phases of development as certified by a valuer, registered as such under Valuers Act, at the cost of the borrower.

Value

10. (1) A state officer who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the advisory committee may prescribe.

App.
loan

(2) An application for a loan for construction purposes shall be accompanied by the following documents where applicable -

- (a) copies of the designs of the proposed residential property duly approved by the county authority within whose area it is to be situated;
- (b) priced bills of quantities in respect of the proposed development;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property;
- (e) proof of availability of ten percent of the value of the property; and
- (f) any other document that the committee may require for the purpose of determining the application.

(3) The borrower shall bear the costs of stamp duty, transfer fees, legal fees and other related charges.

(4) The balance to the full value of the property, the stamp duty, the transfer fee and other related charges shall be paid by the borrower into the Fund Account.

the expiry date of such lease is at least forty-five years from the date the loan is granted.

12. (1) A loan granted under these Regulations shall be repayable within a period of twenty years or before the borrower attains the age of seventy years, whichever is the earlier.

Repayment of loan.

(2) A state officer who is appointed at the age of seventy years or above shall be required to repay the loan for the duration of the state officer's appointment.

(3) A borrower may give prior authority in writing for his pension dues to be utilized to clear any outstanding debt in case the borrower retires before fully repaying the loan.

Cap. 486

(4) Where the property is developed by the Fund for the purposes of tenant purchase, the borrower shall pay a deposit of ten per centum of the value of the property and shall subject to paragraph 5 be granted a loan of the remaining ninety per centum to be repaid monthly and in accordance with these Regulations.

(5) The loan granted to a borrower under paragraph (4) shall not exceed the maximum loan indicated in the Schedule .

13. (1) The interest payable on a loan shall be at the rate of at least three per centum per annum on a monthly reducing balance or such other rate as may from time to time be determined by the committee.

Interest on loan

(2) The interest charged under this regulation shall be paid by the borrower.

14. (1) The Fund shall register a charge on any property financed through a loan granted under these Regulations and such charge shall impose an obligation on the chargee —

Lien under loan property.

(a) not to mortgage, charge, surrender the lease, or sell or agree to sell or part with possession of the charged property or part thereof without the prior written consent of the Committee;

(b) to meet and pay all rates, rents, insurance and any other outgoings in respect of the property and send the proof of such payments to the committee; and

(c) to provide a transfer deed duly signed by the borrower and a letter authorizing the Fund to sell the property in case of default in payment.

(2) All residential properties purchased or developed through the Fund shall be of such standards and constructed of such materials the Committee may approve.

Kenya Subsidiary Legislation, 2015

(c) make no extension or any structural alteration to the property or title thereto without the prior approval of the Committee.

(4) The committee shall grant only one loan or one house to a State officer.

(5) Notwithstanding paragraph (4) the Committee shall grant another loan or a house to a state officer in event of change of status or maximum threshold, as long as there shall not be any outstanding loan repayment due to the Fund.

(6) Where the spouse of a State officer is also a State officer, the granting of a loan or house to one spouse shall not bar the other spouse from benefiting from the Fund.

(7) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

15. (1) A borrower shall take and maintain a life insurance policy and a fire insurance policy with an insurance company approved by the committee, the cost of which shall be paid out of the Fund and debited in the borrower's account.

Insurance
respects
property

(2) Every borrower of a house under construction shall take a mortgage protection cover for the provisional sale price of the property.

16. The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Safe Custody
of Documents

17. The Advisory Committee shall be entitled to do everything lawful and necessary to protect the Government's interest in the property in respect of which a loan is granted.

Protection
Government
interest

18. (1) Where a borrower defaults in the repayment of the loan for a period of three consecutive months the advisory committee shall repossess and sell the property to another deserving state officer.

Default
Repayment

(2) Where a borrower ceases to be a state officer before full loan repayment, the advisory committee may, in its discretion, allow the borrower to continue to repay the loan on the same terms as set out in these Regulations provided that when the borrower defaults in a period of four months the outstanding loan shall revert to prevailing commercial interest rate.

(3) Notwithstanding these Regulations, where a borrower leaves service on disciplinary grounds or resigns before serving for the contract period, the Committee may grant the borrower a maximum period of four months to repay the full outstanding loan or permit the borrower to repay the outstanding loan at the prevailing market rate

19. The officer administering the Fund shall -
- (a) open and manage a bank account for the Fund;
 - (b) supervise and control the administration of the Fund;
 - (c) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirement concerning such use;
 - (d) cause to be kept books of account and other records in relation to the Fund; and
 - (e) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund, in such details as the National Treasury may from time to time direct in accordance with the Public Finance Management Act, 2012.
20. No person shall sell or in any way transfer any property acquired through the Fund under these Regulations unless -
- (a) a period of not less than eight years has expired from the date -
 - (i) the final payment of the full purchase price of the property together with such interest as may be due is made; or
 - (ii) the final repayment of the full loan advanced by the Fund together with such interest as maybe due is made;
 - (b) the sale or transfer has been approved by the Advisory Committee.
21. Where the Advisory Committee approves the appointment of a tenant purchase institution or a mortgage finance company to administer the Fund, the institution shall -
- (a) operate individual accounts for each borrower and provide details of recoveries of the loan;
 - (b) charge security on properties acquired through loans from the fund to protect the interests of the Fund and act as a custodian of such charges;
 - (c) disburse cheques or transfer funds for newly approved loans to borrowers after the necessary documentation is completed by the Committee;
 - (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;

Administration
of the Fund.

No. 18 of 2012

Transfer or sale
of loan
property.

Duties of
mortgage
institution

Kenya Subsidiary Legislation, 2015

22. The Fund may enter into a viable financing or development partnership with a legal entity for the purposes of implementing the objectives of the Fund.

Financing
develop
Partnersh

23. The Scheme may enter into viable management partnership with a scheme from any other public body.

Partnersh
with other
schemes
Managem
costs

24. The Fund or, where applicable, the tenant purchase institution or mortgage finance company referred to under regulation 21, may charge an interest of not more than two per centum per annum of the value of the loan to cover its management costs.

25. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form supplied by the Fund and by the contract between the Fund and the borrower.

Miscellane

26. The Advisory Committee may from time to time recommend to the Cabinet Secretary any amendment to these Regulations.

Amendme
Regulator

SCHEDULE

<i>Beneficiaries</i>	<i>Threshold</i>
Cabinet Secretaries Attorney-General Secretary to the Cabinet Chief of the Kenya Defence Forces Governors of Counties	Up to forty million shilling
Principals Secretaries Members of Independent Commissions Holders of Independent Offices (Controller of Budget, Auditor-General)	Up to thirty five million shillings
Vice-Commander of the Kenya Defence Forces Commander of the Kenya Air Force Commander of the Kenya Navy Director-General, National Intelligence Service Inspector-General of Police Director of Public Prosecution Deputy Governors	Up to thirty million shilling
Deputy Constitutional Office Holders Registrar of Political Parties Other State Officers Chief Executive Officers of Government Agencies	Up to twenty five m shillings

Dated the 27th February, 2015.

HENRY ROTIC