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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT- FIRST SESSION (2022)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (PUBLIC INVESTMENT) REGULATIONS, 2022 (LN. No.
54 of 2022)

 THE NATIONAL ASSEMBLY	
DATE: 30 NOV 2022	
NOVEMBER, 2022	
TABLED BY:	Wednesday
CLERK-AT THE-TABLE:	The vice-chair person, Committee on Delegated Legislation Getrude Chebet

The Directorate of Audit, Appropriations & other Select Committees
The National Assembly,
Parliament Buildings,
NAIROBI.

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ABBREVIATIONS

LN	Legal Notice
PFM	Public Finance Management
PIM	Public Investment Management
SI	Statutory Instruments
SO	Standing Order
GOVT	Government
DEPT	Department
CS	Cabinet Secretary

CHAIRPERSON'S FOREWORD

The Public Finance Management (Public Investment) Regulations, 2022, were made by the Cabinet Secretary for the National Treasury and Economic Planning pursuant to section 205 of the Public Finance Management Act, 2012 and was published in the gazette *vide* Legal Notice No.54 of 2022.

The Regulations were submitted to the Clerk of the National Assembly on 5th May, 2022 and tabled before the House on 10th May, 2022 hence within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013, and subsequently referred to the Committee on Delegated Legislation for consideration.

The Public Finance Management (Public Investment) Regulations, 2022 seek to-

- a) Provide a standard approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment of viable projects that meet development needs;
- b) Establish and maintain a Public Investment Management Information System to inform decision making on Public Investments;
- c) Clarify roles and responsibilities of various institutions in the Public Investment Management processes; and
- d) Enhance transparency, accountability, prudent use of public resources, and public participation.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the Regulation making Authority (The Ministry of National Treasury & Economic Planning) to a pre-publication scrutiny meeting on Thursday 24th November, 2022 to consider the said Instrument and the following issues arose during the plenary -

1. The Committee sought clarity on whether the Ministry had included IBEC in coming up with this Regulations;
2. The Public Investment Management being a new discipline public investment, the committee indicated that it needs to be regulated;
3. The members noted that there is need for The National Treasury to embrace the cash accrual system so as to avoid pending bills in projects which leads to projects stalling due to non-completion;
4. Regulations have incorporated pre-feasibility stage so as to ensure all projects be implemented so as to ensure order in projects planning and implementation;
5. In the long title or the regulations there is need to include IBEC since Article 259(11) of the Constitution and section 205 (2) of the PFM Act requires the regulations be made in consultation with IBEC; and
6. The Committee noted that the projects have been classified basing on their magnitude i.e.
 - a) Large projects which are estimated to cost above 1.0 billion to 5.0 billion shillings
 - b) Medium projects which are estimated to cost above 500 million upto 1.0 billion shillings
 - c) Mega projects which are estimated to cost more than 5.0 billion shillings

The Committee at its scrutiny of the Regulations after publication considered and established that the National Treasury had conformed to the resolutions arrived at during the joint meeting with the committee in the 12th Parliament.

Consultation / Public participation

Articles 10 and 118 of the Constitution require a mandatory conduct of Public Participation by all regulation making Authorities before publication of a statutory instrument. The National Treasury indicated in the Explanatory memorandum submitted along with the Regulations that extensive consultations were done while preparing the Regulations, with key stakeholders whose input were taken into account before finalization of the Regulations. The Ministry of National Treasury & Economic Planning further attached a schedule of persons with whom they met during their public participation exercises.

Having examined the Public Finance Management (Public Investment) Regulations, 2021 (*LN. No. 54 of 2022*), against the Constitution, the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Public Finance Management Act, 2012 (*No. 18 of 2012*), the Committee **resolved to recommend to the House to approve in its entirety the Public Finance Management (Public Investment) Regulations (*L.N. No. 54 of 2022*)**.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Public Finance Management (Public Investment) Regulations, 2022 (*LN. No 54 of 2022*)**.

HON. SAMWEL CHEPKONGA, CBS, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

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 accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
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

3. The Committee membership comprises –

The Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)

Ainapko Constituency

UDA

The Hon. GITHINJI ROBERT GICHIMU, M.P. (Vice Chairperson)

Gichugu Constituency

UDA

COMMITTEE MEMBERS

The Hon. Mbui Robert, M.P.

Kathiani Constituency

WDM - Kenya

The Hon. Kipkoech Gideon Kimaiyo, M.P.

Keiyo South Constituency

UDA

The Hon. Rai Samwel Gonzi, M.P.

Kinango Constituency

PAA

The Hon. Ruku Geoffrey Ruku, M.P.

Mbeere North Constituency

DP

The Hon. Sunkuli Julius Lekakeny, M.P.

Kilgoris Constituency

KANU

The Hon. Komingoi Kibet Kirui, M.P.

Bureti Constituency

UDA

The Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

UDA

The Hon. Chebor Paul, M.P.

Rongai Constituency

UDA

The Hon. Kamene Joyce, M.P.

Machakos County

WDM -Kenya

The Hon. Lenguris Pauline, M.P.

Samburu County

UDA

The Hon. Odoyo Jared Okello, M.P.

Nyando Constituency

ODM

The Hon. Mamwancha Onchoke Charles,
M.P.

Bonchari Constituency

UPA

The Hon. Mwale Nicholas S. Tindi, M.P.

Butere Constituency

ODM

The Hon. Yakub Adow Kuno, M.P.

Bura Constituency

UPIA

The Hon. Chepkorir Linet, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. Mnyazi Laura Amina, M.P.

Malindi Constituency

ODM

The Hon. Linet Chepkorir, M.P.

Bomet County

UDA

The Hon. Abdullahi Bashir Sheikh, M.P.

Mandera North Constituency

JUBILEE PARTY

The Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

UDA Party

The Hon. Mugabe Innocent Maino, M.P.

Lugari Constituency

ODM

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel

Mr. Jacknorine Buleemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Mrs. Sheila Cherobotim
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

Goffrey Khwatemba
Media Relations Officer

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (PUBLIC INVESTMENT) REGULATIONS (L.N. NO. 54 OF 2022)

2.1 Introduction

5. The Cabinet Secretary for the National Treasury is mandated under section 205 of the Public Finance Management Act, 2012 (*No. 18 of 2012*) to make regulations, not inconsistent with the PFM Act respecting any matter that is necessary or convenient to be prescribed under the PFM Act or for the carrying out or giving effect to the PFM Act.
6. Pursuant to section 205 of the PFM Act, 2012 the Cabinet Secretary National Treasury & Economic Planning made the regulations which were, tabled in the House on 10th May, 2022 and subsequently committed to the Committee on Delegated Legislation for scrutiny. The regulation making authority therefore met the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee engaged the National Treasury during a consultative meeting held on 24th November, 2022 in the Small Dining, New Wing, Main Parliament Buildings where the Regulation making Authority made submissions on the regulations.

2.2 Purpose of the Regulations

8. Provide a standard approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment of viable projects that meet development needs;
9. Establish and maintain a Public Investment Management Information System to inform decision making on Public Investments;
10. Clarify roles and responsibilities of various institutions in the Public Investment Management processes; and
11. Enhance transparency, accountability, prudent use of public resources, and public participation.

2.3 Legislative Context

12. The Regulations are being enacted to establish the Public Finance Management (Public Investment) Regulations, 2022 pursuant to Section 205 of the PFM Act, as read with section 12(1)(e) of the PFM Act, which provides as follows:
“205. (1) The Cabinet Secretary may make regulations, not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.”
13. Pursuant to section 12. (1) Subject to the Constitution and this Act, the National Treasury shall—

- (a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;
 - (b) manage the level and composition of national public debt, national guarantees and other financial obligations of national government within the framework of this Act and develop a framework for sustainable debt control;
 - (c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;
 - (d) mobilise domestic and external resources for financing national and county government budgetary requirements;
 - (e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution: Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;
 - (f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;
 - (g) develop policy for the establishment, management, operation and winding up of public funds;
 - (h) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the annual Division of Revenue Bill and the County Allocation of Revenue Bill;
 - (i) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
 - (j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.
14. During the scrutiny the committee took note that the Regulations in particular, and, in summary provide for -
- a) A standard approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning;
 - b) Establishment and maintenance of a Public Investment Management Information System to inform decision making on Public Investments;
 - c) Roles and responsibilities of various institutions in the Public Investment Management processes; and
 - d) Transparency, accountability, prudent use of public resources, and public participation.

2.4 Policy Background

- 15. The Ministry of National Treasury and Economic Planning in consultation with the office of the Attorney General had to come up with a draft Public Finance Management (Public Investment) Regulations, 2022 pursuant to Section 205 of the PFM 2012.
- 16. The backdrop was from the intention to provide a framework for efficient and effective public investment projects management that includes project identification and planning;

pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment to ensure value for money and optimal use of public resources.

2.5 Overview of the Regulations

17. The following are the highlights of the Regulations:

- a) **Regulation 3 & 4:** outlines the Objects and Purposes of the Regulations.
- b) **Regulation 5:** provides for the scope of the Regulations.
- c) **Regulation 6:** provides for the role of Parliament and County Assemblies in the process which shall be-
 - i) To provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided by the PFM Act; and
 - ii) To ensure that appropriation for public investments is only for prioritized pipelined projects.
- d) **Regulation 7:** provide for the Cabinet and County Executive committee as follows-
 - i) Provide strategic leadership and interventions in public investment processes;
 - ii) Issue policies required for proper, efficient and effective public investment processes; and
 - iii) Provide necessary approvals in respect of public investment process, where required.
- e) **Regulation 8 :** provide for the role of the Cabinet Secretary of the line Ministry or County Executive Committee Member of the County department and the responsibilities of the National Treasury : -
 - i) Provide strategic leadership and interventions during implementation of public investments;
 - ii) Provide necessary approvals for projects emanating from State or County Corporations.
- f) **Regulation 14:** Provides for the establishment of Project Committee. An accounting Officer in the National Government or its Entity shall establish a Project Committee comprising of appropriate officers as follows —
 - i) Head of Directorate or a Department, who shall be the Chairperson;
 - ii) An officer from Finance Department;
 - iii) A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;
 - iv) One officer from any Department of the National Government Ministries Departments and Agencies; and
 - v) Head of planning or his or her representative, who shall be the secretariat.
- g) **Regulation 15:** Provides for establishment of county project committees – An accounting officer in a County Government or its entity shall establish a project committee comprising of the following-
 - i)Head of the Directorate or a Department, who shall be the chairperson;
 - ii)One Officer from the Finance Department;
 - iii)A maximum of four members appointed on ad hoc basis on their technical knowledge and depending on the project being implemented;
 - iv)One member from any department of a County Government Departments and agencies; and
 - v)The head of planning or his or her representative, who shall be the secretariat.

- h) Regulation 16:** Provides for the functions of the project committees. This comprises as follows:-
- i) To review project concept notes and make recommendations to the accounting officer for decision making within thirty days;
 - ii) To review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision making within thirty days;
 - iii) To identify potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;
 - iv) To prioritize projects based on the National Government Ministries, Departments and agencies or County Government Departments and Agencies strategic Plan, Medium Term Plan, and National and County development plans;
 - v) To recommend the mode of project financing
 - vi) Ensure projects are aligned to the National development Plans.
- i) Regulation 22 - 23:** provides for the implementation, monitoring, evaluation and reporting mechanism.
- j) Regulation 24 - 26:** provides for the project closure, sustainability and ex-post evaluation
- k) Regulation 29:** provides for the Public Investment Management Information System. The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System. The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.

2.6 Scrutiny of the Instrument

18. In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the Regulation Making Authority, being the National Treasury & Economic Planning on Thursday 24th November, 2022 in the Small Dining, Main Parliament Buildings and observed that the regulations were good for the nation's economic development and employment creation well recognized in the Kenya's economic blueprint, the vision 2030, the economic transformative agenda of the Kenya Kwanza Government.
19. The Committee further considered the Public Finance Management (Public Investment) Regulations, 2022 to check its conformity with the Constitution, the Public Finance Management Act of 2012, and the Statutory Instruments Act, 2013 (No. 23 of 2013).

2.7 Justification

20. Over the recent past, the Government has been increasing public investments at both levels of Governments. Specifically, in the last five Financial Years period, the Government cumulatively allocated over 4.2 trillion development budget to finance public investments projects across the country. The committee was notified that the regulations proposes a framework to guide Public Investment Management Regulations in order to provide a comprehensive approach to project identification, planning, appraisal, selection, budgeting, implementation, monitoring and evaluation, reporting, project closure, sustainability and ex-post evaluation.

21. The main objective of the regulations is to provide a framework for screening public funded projects before being funded to ensure quality, effectiveness and efficiency of projects implemented using public resources. This will enhance public investments through implementation of quality and efficient projects, with the highest rates returns on investments.

3.0 COMMITTEE OBSERVATIONS

22. Having examined the Public Finance Management (Public Investments) Regulations, 2022 in accordance with the Constitution of Kenya, the Public Finance Act (No 18 of 2012), the Statutory Instruments Act (No 23 of 2013) and Section 12 of the PFM Act the Committee made the following observations –

3.1 Statutory Timelines

23. THAT the Regulations were published in the gazette on 1st April, 2022, *vide* Legal Notice No 54 of 2022, submitted to the Clerk, National Assembly on 5th May, 2022 and laid in the House on 10th May, 2022 being within the statutory timelines set out in section 11(1) of the Statutory Instruments Act, 2013.

3.2 Public Participation

24. THAT, Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.
25. During consultations with the Regulation Making Authority, the Ministry of National Treasury & Economic Planning demonstrated through a schedule in the explanatory memorandum that they conducted public participation as annexed on the report.

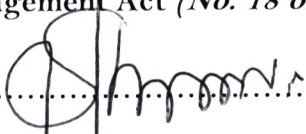
3.3 Regulatory Impact Statement

The committee was notified that the promulgation of the Public Investment Management Regulations will occasion minimal expenditure to operationalize the PIM Regulations and which can be accommodated within the sector ceilings of the Ministry of National Treasury and Economic Planning.

4.0 COMMITTEE RECOMMENDATION

26. Having examined the Public Finance Management (Public Investment) Regulations, 2022 in accordance with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013), the Public Finance Act (No. 18 of 2012), **and the Committee recommends that the House approves the Public Finance Management (Public Investment) Regulations (LN. No. 54 of 2022) in accordance with section 12 (1)(e) of the Public Finance Management Act (No. 18 of 2012).**

Signed.....



Date 29/11/2022.....

The Hon. Chepkonga Kiprono Samuel, CBS, M.P.
(Chairperson)

ANNEXURES

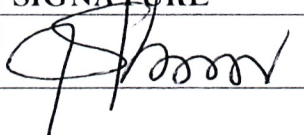
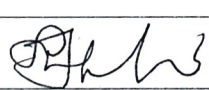
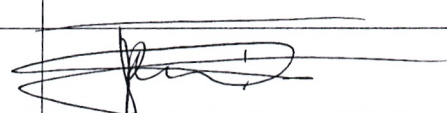
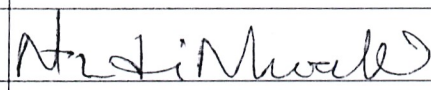
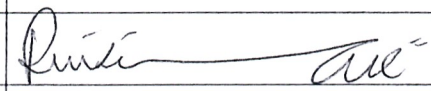

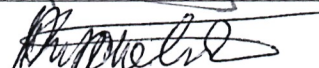
- 1. Adoption List**
- 2. Legal Notice Number 54 of 2022 and the Explanatory Memorandum**
- 3. Committee Minutes**
- 4. Stakeholder consultative meeting attendance lists.**

COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 29.11.2022 VENUE: Small Dining Starting Time: 10:15 AM

New wing Ending Time: 11:00 AM

AGENDA: Adoption of Public Finance (Financial Inclusion) Regula
Adoption of Finance Management (Public Investment) Regula

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, M.P.	
4.	The Hon. Rai, Samuel Gonzi, M.P.	
5.	The Hon. Sunkuli Julius Lekakeny, MP	
6.	The Hon. Abdullahi Bashir Sheikh, M.P.	
7.	The Hon. Mwirigi, John Paul, M.P.	
8.	The Hon. Kamene, Joyce, M.P.	
9.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
10.	The Hon. Odoyo, Jared Okello, M.P.	
11.	The Hon. Chepkorir, Linet, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon. Kipkoech, Gideon Kimaiyo, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The. Hon. Komingoi, Kibet Kirui, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

Regula 2022

21.	The Hon. Mugabe, Innocent Maino, M.P.	
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COMMITTEE CLERK:SIGNATURE.....

DIRECTOR, DAA&OSC: SIGNATURE.....

MINUTES OF THE 8th SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 29th NOVEMBER, 2022, IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDING AT 10:00 AM.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson**
2. The Hon. Sunkuli Julius Lekakeny, MP
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Kibet Kirui Kimingoi, M.P.
5. The Hon. John Paul Mwirigi, M.P.
6. The Hon. Paul Chebor, M.P.
7. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.

APOLOGIES

1. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
2. The Hon. Joyce Kamene, M.P.
3. The Hon. Linet Chepkorir M.P.
4. The Hon. Robert Mbui, M.P
5. The Hon. Samuel Gonzi Rai, M.P.
6. The Hon. Jared Okello Odoyo M.P
7. The Hon. Charles Onchoke Mamwacha.M.P
8. The Hon. Innocent Maino Mugabe, M.P.
9. The Hon. Adow Kuno Yakub, M.P.
10. The Hon. Joseph Kamau Munyoro, M.P.
11. The Hon. Laura Amina Mnyazi, M.P.
12. The Hon. Pauline Lenguris, M.P.
13. The Hon. Abdullahi Bashir Sheikh, M.
14. The Hon. Gideon Kimaiyo Kipkoech, M.P.

IN ATTENDANCE

THE NATIONAL ASSEMBLY.

- | | | |
|---------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Brian Langwech | - | Clerk Assistant III |
| 3. Ms. Winny Otieno | - | Clerk Assistant III |
| 4. Mr. Jacknorine Bulemi | - | Clerk Assistant III |
| 5. Geoffrey Kwatamba | - | Media Relations Officer |
| 6. Fiona W Githunguri | - | Legal Counsel II |
| 7. Mrs. Sheila Chebotibin | - | Serjeant-At-Arms. |
| 8. Mr. Charles Ayari | - | Audio Officer |

AGENDA

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of previous minutes;
5. Matters arising;
6. Briefing on;
1. **Briefing on**
 - i. **The Public Finance Management (Financial Inclusion) Regulations, 2022. (Legal Notice 213/2022)**
 - ii. **Consideration and adoption of the reports on**
 - a) **The Public Finance Management (Financial Inclusion) Regulations, 2022. (Legal Notice 213/2022)**
 - b) **The Public Finance Management (Public Investment) Regulations, 2022 (Legal Notice 54/2022)**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/046/2022

PRELIMINARIES

The Chairperson called the Meeting to order at 10:15 a.m. after which prayers were said by Hon Tindi Mwale, MP. The Chairperson then welcomed all present to the meeting.

MIN. DAA&OSC/CDL/047/2022

ADOPTION OF THE AGENDA

The Members adopted the agenda of the meeting as was proposed by Hon. Tindi Mwale and seconded by Hon. Sunkuli Lekakeny Ole, M.P.

MIN. DAA&OSC/CDL/048/2022

CONFIRMATION OF MINUTES

Minutes of the 5th Sitting held on Tuesday, 22nd November, 2022 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny, MP and seconded by the Hon. Geoffrey Kariuki Kiringa Ruku, MP.

Minutes of the 6th Sitting held on Tuesday, 22nd November, 2022 were confirmed as true records of the deliberations as proposed by the Hon. Kibet Kirui Komingoi, MP and seconded by Hon. Sunkuli Julius Lekakeny, MP.

Minutes of the 7th Sitting held on Thursday, 24th November, 2022 were confirmed as true records of the deliberations as proposed by the Hon. Geoffrey Kariuki Kiringa Ruku, MP and seconded by Hon. Paul Chebor, MP.

MIN. DAA&OSC/CDL/049/2022

MATTERS ARISING

Under MIN. DAA&OSC/CDL/044/2022 (1) Members were informed that a letter to the Attorney-General had been sent conveying Committee's concurrence on the draft Regulations on the exemption of expiry and extension of period.

MIN. DAA&OSC/CDL/050/2022

BRIEFING ON THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022. (LEGAL NOTICE 213 OF 2022)

The Committee considered the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 Legal Notice No. 213 of 2022 and observed that the National Treasury and Economic Planning had included all the concerns that had been raised by the Members while considering the Draft Regulations.

MIN. DAA&OSC/CDL/051/2022

CONSIDERATION AND ADOPTION OF THE REPORT ON PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND), 2022 (LEGAL NOTICE 213 OF 2022)

The Committee considered and adopted the Report on the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 (Legal Notice 213 of 2022) as proposed by the Hon. Paul Chebor, MP and seconded by the Hon. Geoffrey Kariuki Kiringa Ruku, MP

MIN. DAA&OSC/CDL/052/2022

CONSIDERATION AND ADOPTION OF THE REPORT ON PUBLIC FINANCE MANAGEMENT (PUBLIC INVESTMENT), 2022 (LEGAL NOTICE 54 OF 2022)

The Committee considered and adopted the Report on the Public Finance Management (Public Investment) Regulations, 2022 (Legal Notice 54 of 2022) as proposed by the Hon. Sunkuli Julius Lekakeny, MP and seconded by the Hon. Geoffrey Kariuki Kiringa Ruku, M.P.

MIN. DAA&OSC/CDL/053/2022

ADJOURNMENT.

There being no other business, the meeting was adjourned at Five Minutes past Eleven O'clock. The next meeting will be held on Thursday, 1st December, 2022 at Ten O'clock.

SIGNED: 

**THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

DATE: 

MINUTES OF THE 7th SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 24th NOVEMBER, 2022, IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDING AT 10:00 AM.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Gideon Kimaiyo Kipkoech, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
7. The Hon. Abdullahi Bashir Sheikh, M.

APOLOGIES

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Linet Chepkorir M.P.
3. The Hon. Robert Mbui, M.P
4. The Hon. Samuel Gonzi Rai, M.P.
5. The Hon. Sunkuli Julius Lekakeny, MP
6. The Hon. Jared Okello Odoyo M.P
7. The Hon. Nicholas S. Tindi Mwale, M.P.
8. The Hon. Charles Onchoke Mamwacha.M.P
9. The Hon. Innocent Maino Mugabe, M.P.
10. The Hon. Adow Kuno Yakub, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Laura Amina Mnyazi, M.P.
13. The Hon. Pauline Lenguris, M.P.
14. The Hon. Kibet Kirui Kimingoi, M.P.

IN ATTENDANCE

THE NATIONAL ASSEMBLY.

- | | | |
|---------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Winny Otieno | - | Clerk Assistant III |
| 5. Mr. Jacknorine Bulemi | - | Clerk Assistant III |
| 6. Geoffrey Kwatamba | - | Media Relations Officer |
| 7. Mrs. Sheila Chebotibin | - | Serjeant-At-Arms. |
| 8. Mr. Charles Ayari | - | Audio Officer |

NATIONAL TRASURY AND ECONOMIC PLANNING

1. FCPA Julius Muia, PhD - Principal Secretary
2. John Karani - Chairman Kenya Institute of Supplies Management.
3. Miriam Kakenya - Office of the Attorney General

KENYA REVENUE AUTHORITY

1. Dr. Mohamed Omar -Commissioner, KRA.
2. Mr. Maurice Oray - Deputy Commissioner, KRA
3. Sharon Kirai -Parliamentary Liaison Officer, KRA

AGENDA

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of previous minutes;
5. Matters arising;
6. Briefing on;
 - i. **The Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94/2022)**
 - ii. **The Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)**
 - iii. **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)**
 - iv. **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/038/2022

PRELIMINARIES

The Chairperson called the Meeting to order at 11:00 a.m. after which prayers were said. The Chairperson then welcomed all present to the meeting, followed by a round of introduction..

MIN. DAA&OSC/CDL/039/2022

ADOPTION OF THE AGENDA

The Members adopted the agenda of the meeting as was proposed by Hon. Paul Chebor, M.P. and seconded by Hon. Gideon Kimaiyo Kipkoech, M.P.

MIN. DAA&OSC/CDL/040/2022

BRIEFING ON THE SUPPLIES PRACTITIONERS MANAGEMENT (COUNCIL ELECTION) REGULATIONS, 2022. (LEGAL NOTICE 94 OF 2022)

Dr. Julius Muia, Principal Secretary, Ministry of Treasury and Economic Planning briefed the Committee on the **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** as follows, that:

1. **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** was made by the Cabinet Secretary for National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 94 of 2022.
2. The Regulations were received on **09th September 2022** by the Clerk of the National Assembly and thereafter tabled on **Friday , 04th October 2022** in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The scope of the Regulations consists of: Preliminary provisions in Part I, Institutional Framework in Part II, Conduct of Elections in Part III and Election offences in Part IV.
4. The Regulations provide for;
 - i. The Procedure for the Election of the Chairperson of the Council and the six members of the Council.
 - ii. Appointment of the Electoral body by the Council. IEBC had been approved by the Council as the Electoral body and an acceptance letter from IEBC availed.
 - iii. Establishment of The Election Dispute Resolution Committee (EDRC) which comprised of;
 - a) 1 person nominated by the National Centre for International Arbitration- Chairperson.
 - b) 3 Members of the Institute nominated by the Council
 - c) An Advocate of the High Court of Kenya
 - d) Corporation Secretary of the Institute, who shall be an ex officio member.
 - e) Role of the EDRC- Resolving disputes arising from conduct of the Elections.
5. The Regulation also takes into consideration the dates for elections, eligibility to vote, the mode of voting (Electronic), qualification for nomination, verification of nomination forms, election offences and penalties for election offences.
6. The National Treasury, through Kenya Institute of Supplies Management noted that they had benchmarked with other Bodies like ICPAK and IHRM which had successfully procured the electoral materials and their decision to undertake the Procurement was done on this basis.
7. The Committee deliberated on the aforementioned Regulations and **Approved** to them as published in the *gazette*.

MIN. DAA&OSC/CDL/041/2022

**BRIEFING ON THE PUBLIC FINANCE
MANAGEMENT (PUBLIC INVESTMENT)
REGULATIONS, 2022.
(LEGAL NOTICE 54/2022)**

Dr. Julius Muia, Principal Secretary, The National Treasury and Economic Planning Briefed the Committee on the **Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)** as follows, that:

1. **Public Finance Management (Public Investment) Regulations, 2022.** (Legal Notice 54/2022).were made by the Cabinet Secretary, National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 54 of 2022.
2. The Regulations were received on 05th May, 2022 by the Clerk of the National Assembly and thereafter tabled on 10th May, 2022 in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The Regulations provide for:
 - a) **Regulation 3 & 4:** outlines the Objects and Purposes of the Regulations.
 - b) **Regulation 5:** provides for the scope of the Regulations.
 - c) **Regulation 6:** provides for the role of Parliament and County Assemblies in the process which shall be-
 - i) To provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided by the PFM Act; and
 - ii) To ensure that appropriation for public investments is only for prioritized pipelined projects
 - d) **Regulation 7:** provide for the Cabinet and County Executive committee as follows-
 - i) Provide strategic leadership and interventions in public investment processes;
 - ii) Issue policies required for proper, efficient and effective public investment processes; and
 - iii) Provide necessary approvals in respect of public investment process, where required.
 - e) **Regulation 8 :** provide for the role of the Cabinet Secretary of the line Ministry or County Executive Committee Member of the County department and the responsibilities of the National Treasury : -
 - i) Provide strategic leadership and interventions during implementation of public investments;
 - ii) Provide necessary approvals for projects emanating from State or County Corporations.
 - f) **Regulation 14:** Provides for the establishment of Project Committee. An accounting Officer in the National Government or its Entity shall establish a Project Committee comprising of appropriate officers as follows —
 - i) Head of Directorate or a Department, who shall be the Chairperson;
 - ii) An officer from Finance Department;
 - iii) A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;
 - iv) One officer from any Department of the National Government Ministries Departments and Agencies; and
 - v) Head of planning or his or her representative, who shall be the secretariat.
 - g) **Regulation 15:** Provides for establishment of county project committees –

An accounting officer in a County Government or its entity shall establish a project committee comprising of the following-

- i) Head of the Directorate or a Department, who shall be the chairperson;
- ii) One Officer from the Finance Department;
- iii) A maximum of four members appointed on ad hoc basis on their technical knowledge and depending on the project being implemented;
- iv) One member from any department of a County Government Departments and agencies; and
- v) The head of planning or his or her representative, who shall be the secretariat.

h) Regulation 16: Provides for the functions of the project committees. This comprises as follows:-

- i) To review project concept notes and make recommendations to the accounting officer for decision making within thirty days;
 - ii) To review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision making within thirty days;
 - iii) To identify potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;
 - iv) To prioritize projects based on the National Government Ministries, Departments and agencies or County Government Departments and Agencies strategic Plan, Medium Term Plan, and National and County development plans;
 - v) To recommend the mode of project financing
 - vi) Ensure projects are aligned to the National development Plans.
- i) Regulation 22 - 23:** provides for the implementation, monitoring, evaluation and reporting mechanism.
- j) Regulation 24 - 26:** provides for the project closure, sustainability and ex-post evaluation
- k) Regulation 29:** provides for the Public Investment Management Information System. The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System. The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.
- l) The scope of these Regulations shall apply to:**
- a) National and County Governments and their entities, including Commissions, independent offices, and state organs when planning and Implementing Public Investments.
 - b) Public Investment projects whether wholly or partially funded through public Finances irrespective of source
 - c) Projects considered for implementation through Public Private Partnership arrangements , in so far as the Regulations are not in Contradiction with the provisions of the Public Private Partnership Act, 2021

- d) Security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act, 2015 except where expressly included, or if the Cabinet Secretary so directs.

3.3. The Committee deliberated on the aforementioned Regulations and Approved to them as published in the gazette.

MIN. DAA&OSC/CDL/042/2022

**BRIEFING ON ADJUSTMENT OF
RATES OF EXCISE DUTY FOR
INFLATION REGULATIONS, 2022
AND THE EXPLANATORY
MEMORANDUM. (LEGAL
NOTICE 176 OF 2022)**

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority briefed the Committee on **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)** as follows, that:

1. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 176/2022)** was published in the Gazette on 3rd October, 2022, and received by the Clerk of National Assembly on 14th October, 2022 and was tabled before the House on 1st November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 176/2022)** were made by KRA to;
 - i. Provide for adjustments for inflation and part I of the First Schedule of the Excise Duty Act on Rates of Excise Duty.
 - ii. The specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.8%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
 - iii. It was further noted that the approval of the Regulations would lead to a generation of Ksh. 5.2 Billion from the goods whose excise duty rates were adjusted for inflation excluding petroleum products, liquid nicotine for electronic cigar rates and imported ready to use SIM cards which were made excisable through the Finance Act 2022.
3. KRA submitted a revised Regulations 176 of 2022 to correct typographical error in item 1 as 'Grape must' and item 12 as 'imported sugar confectionary of tariff' through a letter Ref: KRA/5/1002/5(8153) and republished as Legal Notice No. 204 of 2022.
4. Upon deliberation on the aforementioned Regulations, the Committee **Approved** to them as published in the gazette.

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority briefed the Committee on **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)**

1. The Legal Notice was published in the Gazette on 3rd of October, 2022, received by the Clerk of National Assembly on 14th October, 2022 and was tabled before the House on 1st November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
 2. The **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)** provides for;
 - i. The miscellaneous Fees and levies specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
 - ii. The main purpose of this inflation adjustment is to ensure elasticity of tax revenue when the economy grows.
 - iii. The Approval for the Regulation would lead to generation of Ksh. 18.16Million from the goods whose miscellaneous fees and levy duty rates were adjusted for inflation excluding iron ores and concentrates including roasted iron pyrites.
 3. KRA submitted a revised Regulations 177 of 2022 to a letter Ref: KRA/5/1002/5(8153) and republished as Legal Notice No. 203 of 2022.
 4. The Committee however urged the Commission to expand its tax base to capture MSMEs as this will increase its tax collection.
- 4.2. Upon deliberation on the aforementioned Regulations, the Committee **Approved** to them as published in the gaze

MIN. DAA&OSC/CDL/044/2022

ANY OTHER BUSINESS.

The following matters were raised under this agenda item:

1. The Committee having been in receipt of a letter from the Attorney-General requesting for extension of period for the expiring Regulations requested that the Committee Clerk to request The office of the Attorney General to submit Regulations requesting for the extension.
2. The Parliament of Kenya was also required to provide for Regulations requesting for extension of its Regulations including Car and Mortgage Regulation and The Centre For Parliamentary Studies Regulations.
3. The Committee also noted that there were many of pending Regulations and therefore organized for a retreat to consider the Regulations during the week beginning 5th December, 2022.

MIN. DAA&OSC/CDL/045/2022

ADJOURNMENT.

There being no other business, the meeting was adjourned at Ten Minutes to Two O'clock. The next meeting will be held on Tuesday, 29th November, 2022 at Ten O'clock.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 

DATE: 10 MAY 2022

TUESDAY

TABLED

BY:

MAJORITY LEADER

SPECIAL ISSUE

Kenya Gazette Supplement No. 52



1st April 2022

343

(Legislative Supplement No. 29)

LEGAL NOTICE No. 54

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 205, read with section 12(1)(e) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (PUBLIC INVESTMENT MANAGEMENT) REGULATIONS, 2022

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Public Finance Management (Public Investment Management) Regulations, 2022.

Citation.

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

Interpretation.

“Act” means the Public Finance Management Act, 2012;

No. 18 of 2012.

“Accounting Officer” has the meaning assigned to it under section 2 of the Act;

“Bottom-up Approach” means an approach that identifies projects in response to stakeholder needs, through relevant stakeholder consultations;

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

“Completed project” means a project which has been fully implemented and expected output delivered as per the project implementation plan;

“Contract Implementation Team” has the same meaning assigned to it under section 2 of the Public Procurement and Asset Disposal Act, 2015;

No. 33 of 2015.

“County Government entity” has the meaning assigned to it under section 2 of the Act;

“End Term Evaluation” means an evaluation for a programme or project conducted immediately after completion of the project or when all the project outputs have all been delivered;

“Environmental Impact Assessment” has the meaning assigned to it under the Environmental Management and Coordination Act, 1999;

No.8 of 1999.

“evaluation” means an analysis conducted periodically on policy, programme or project to objectively determine its effectiveness, efficiency, relevance, sustainability and impact;

"ex-post evaluation" means an evaluation conducted within five years after project completion with the emphasis on the relevance, efficiency, effectiveness, impact and sustainability of the project with the aim of deriving lessons learned and recommendations to help improve future projects;

"feasibility study" means a study undertaken to explore the: market and demand assessment; technical and engineering feasibility; environmental impacts; human resource and administrative capacity; legal and institutional capacity; financial/private and economic/social viability; social and distributive impact; and risk analysis before undertaking a project;

"large projects" means projects estimated to cost above 1.0 billion up to 5.0 billion shillings or as may be determined by the Cabinet Secretary by the time they are completed and handed over;

"Logical Framework Analysis" means a project planning approach that analyses incremental causal relations in project planning including risks and assumptions;

"Logical Framework Matrix" means a systematic tool for designing, planning, implementing and monitoring and evaluating of a project or a Programme;

"medium projects" means projects estimated to cost above 500 million up to 1.0 billion shillings or as may be determined by the Cabinet Secretary by the time they are completed and handed over;

"Mid-Term Evaluation" means an evaluation conducted for an ongoing programme or project in order to inform decision making and taking stock of initial lessons from experience at a period that is almost halfway during implementation.

"mega projects" means projects estimated to cost more than 5.0 billion shillings or as may be determined by the Cabinet Secretary by the time they are completed and handed over;

"National Government Entity" has the meaning assigned under section 2 of the Public Finance Management Act, 2012;

"new project" means a pipeline project which has been prioritized for financing but implementation works are yet to commence;

"ongoing project" means a project whose implementation is in progress;

"outcomes" means the expected changes or effects on the intended beneficiaries occurring as a result of project or programme implementation;

"outputs" means direct products, services or results arising from the implementation of a project or programme;

"pipeline project" means a project that has been appraised and granted the necessary approvals in accordance with these regulations and uploaded in the Public Investment Management Information System;

“pre-feasibility study” means a preliminary study undertaken to determine, analyse and select the best project option to address an identified problem;

“Procuring Entity” has the same meaning as assigned to it under the Public Procurement and Asset Disposal Act, 2015;

“Project” means a temporary developmental undertaking for the purpose of delivering specific products, services or results within a given budget and timeframe and to a certain specified quality;

“project appraisal” means an analysis of a project to establish its economic, fiscal, financial and technical viability, benefits to stakeholders and how risks associated with the project are identified and mitigated;

“project coordinator” means a public officer designated by accounting officer to oversee the implementation of an integrated project or program as per the project implementation plan;

“project Concept Note” means a document prepared for the purpose of initial appraisal of a project idea to assess its relevance and suitability for funding or progress to pre-feasibility stage in order to solve an identified problem;

“project Cycle” means a series of sequential phases from project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment;

“project pipeline” means a database of projects that have been appraised and granted the necessary approvals in accordance with these regulations and uploaded in the Public Investment Management Information System;

“Public Entity” has the meaning assigned to it under section 2 of the Public Procurement and Asset Disposal, 2015;

“Public Investment” means expenditure on the development or an acquisition, hiring or leasing of an asset or service(s) by the Government and its entities to deliver public goods, services or results but does not include government investments in shares and equities;

“Project Manager” means a public officer designated by an accounting officer to oversee the implementation of a project;

“Public Private Partnership” has the meaning as assigned to it under the Public Private Partnerships Act, 2013.

“small projects” means projects estimated to cost less than or equal to 500 million shillings or as may be determined by the Cabinet Secretary from time to time by the time they are completed and handed over;

“State Organ” has the meaning as assigned to it under Article 260 of the Constitution;

No.15 of 2013.

“stalled project” means a project which has stopped being implemented or has received minimal budget allocations over the medium term which cannot facilitate meaningful progress.

“Top-down Approach” means a project implementation approach that identifies projects in response to policy objectives highlighted in National and County development plans, sectoral and strategic plans and other policy documents such as Budget Policy Statements and County Fiscal Strategy Paper; and

“value for money” has the meaning assigned to it under the Public Finance Management Regulations, 2015.

LN. No 34 of
2015.

3. The purpose of these Regulations is to provide a legal framework for efficient and effective public investment management that includes project identification and planning, pre-feasibility and feasibility, selection for budgeting, implementation, monitoring, evaluation and reporting, closure, sustainability and impact assessment to ensure value for money and optimal use of public resources.

Purpose of these
Regulations.

4. The main objectives of these Regulations are—

Objectives of the
Regulations.

- (a) to provide a standardized approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning, pre-feasibility and feasibility, selection for budgeting, implementation, monitoring, evaluation and reporting, closure, sustainability and impact assessment of viable projects that meet development needs;
- (b) to establish and maintain a Public Investment Management Information System to inform decision making on public Investments;
- (c) to clarify roles and responsibilities of various institutions in the Public Investment Management processes; and
- (d) to enhance transparency, accountability, prudent use of public resources, and public participation.

5. (1) The provisions of these Regulations shall, except where expressly or by implication excluded, apply to—

The scope of the
Regulations.

- (a) National and County Governments and their entities, including constitutional commissions, independent offices, and state organs when planning and implementing public investments;
- (b) public investment projects whether wholly or partially funded through public finances, irrespective of the source; and
- (c) projects considered for implementation through Public Private Partnership arrangements, in so far as the Regulations are not inconsistent with the provisions of the Public Private Partnership Act, 2021.

(2) The provisions of these Regulations shall not, except where expressly included, or if the Cabinet Secretary so directs, apply to security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act, 2015.

No. 33 of 2015

PART II—INSTITUTIONAL FRAMEWORK IN PUBLIC INVESTMENT

6. The role of Parliament and the County Assemblies in public investment process shall be—

Role of Parliament and County Assemblies.
(c)

- (a) to provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided for by the Act; and
- (b) to ensure that appropriation for public investments is only for prioritized pipelined projects.

7. The Cabinet and the County Government executive committee, as the case may be, shall—

Role of Cabinet and County executive committee.

- (a) provide strategic leadership and interventions in public investment processes;
- (b) issue policies required for proper, efficient and effective public investment processes; and
- (c) provide necessary approvals in respect of public investment process, where required.

8. The Cabinet Secretaries or County Executive Committee Members shall:

Role of the Cabinet Secretary of the line ministry or County Executive Committee Member of the County department Responsibilities of the National Treasury.

- a. Provide strategic leadership and interventions during implementation of public investments;
- b. Provide necessary approvals for projects emanating from State or County corporations.

9. (1) The National Treasury shall have the following responsibilities for both National and County Governments and their entities in respect of public investment process—

- (a) reviewing the Public Investment Management Schedules under these Regulations and communicate any changes to accounting officers in National and County Governments and their entities;
- (b) oversee the implementation and ensure compliance with these Regulations;
- (c) formulate, develop and oversee the public investment management policies;
- (d) design, develop and maintain an efficient, effective and

reliable Public Investment Management Information System in accordance with regulation 28 to be used by National and County Governments and their entities;

(e) administer the Public Investment Management Information System including assigning role-based user and access rights to accounting officers and officers designated by them;

(f) build and strengthen the capacity of National and County Governments and their entities on the use of Public Investment Management processes and systems;

(g) establish a Public Investment Management Department, which shall be the focal point for public investment management;

(h) develop and set out methodologies, criteria and standards for the appraisal of project concept notes, pre-feasibility and feasibility studies and the general management of public investment projects;

(i) develop a public investment management stakeholder engagement and information disclosure framework in accordance with the provisions of the Access to Information Act, 2016;

(j) ensure, where applicable, that financing agreements with development partners are entered into for projects that have been approved and uploaded in the Public Investment Management Information System; and

(k) issue circulars to National Government and County Government and their entities with respect to implementation of these Regulations.

(2) Where National Government projects are concerned, the Public Investment Management Department at the National Treasury shall be responsible for—

(a) developing and maintaining a framework for project planning, conceptual design and implementation;

(b) reviewing project concept notes for medium, large and mega projects and recommending whether or not pre-feasibility and feasibility studies should be undertaken;

(c) reviewing pre-feasibility and feasibility studies and recommending the projects for inclusion in the project pipeline;

(d) monitoring the use of Public Investment Management Information System;

(e) consolidating portfolio of public investment projects in the pipeline, which have been approved by accounting officers;

(f) approving new projects prioritized by accounting officers for

funding where there is fiscal space;

- (g) reporting on all ongoing projects that do not receive funding in the succeeding year to Cabinet and the National Assembly when submitting budget estimates;
- (h) preparing analytical reports based on project data in the Public Investment Management Information System to inform decision making on policy planning and budget execution;
- (i) sharing project analytical reports during the Intergovernmental Budget and Economic Council for coordination; and
- (j) organizing annual public investment forums for knowledge sharing.

10. A County Treasury shall have the following responsibilities with regard to public investment process—

Responsibilities
of County
Treasury.

- (a) establish a Public Investment Management Unit at the County Treasury, which shall be the focal point for public investment management for the County Government;
- (b) review Project Concept Notes for medium, large and mega projects, and recommending whether or not pre-feasibility and feasibility studies should be undertaken;
- (c) build and strengthen the capacity of County Government and its entities on the use of Public Investment Management processes and systems;
- (d) ensure, where applicable, that financing agreements with development partners are entered into for projects that have been approved and uploaded in the Public Investment Management Information System;
- (e) review feasibility studies and recommending the projects for inclusion in the project pipeline;
- (f) monitor the public investment management information system to ensure that approved project pipelined;
- (g) report on all ongoing projects that do not receive funding in the succeeding year to County Executive Committee and County assembly when submitting budget estimates;
- (h) consolidate portfolio of public investment projects in the pipeline, which have been approved by accounting officers;
- (i) approve new projects prioritized by the accounting officer for funding where there is fiscal space;
- (j) prepare analytical reports based on project data in the Public Investment Management Information System to inform decision making on policy planning and budget execution;
- (k) share project analytical reports with the National Treasury during the Intergovernmental Budget and Economic Council

for coordination; and

- (l) organize annual public investment forums for knowledge sharing.

11. The department responsible for planning at the National Government shall have the following responsibilities in respect of public investment process—

Responsibility of the department of planning.

- (a) convene public participation and stakeholder consultation forums in order to identify strategic National and sectoral priorities to be included in National development plans;
- (b) co-ordinate development of National and sectoral development plans;
- (c) build the capacity of National and County Governments and their entities on Public Investment Management processes, tools and techniques;
- (d) issue guidelines to guide the development of National Development Plan, County Integrated Development Plans, Sectoral and Strategic Plans;
- (e) develop and maintain a framework for monitoring, evaluation and reporting on non-financial performance of projects which will be automated through the Public Investment Management Information System;
- (f) carry out independent mid-term and end-term evaluations for medium, large and mega projects on a sample basis in accordance with the format provided for under the First Schedule to these Regulations;
- (g) provide adequate and skilled staff for units responsible for Project Planning and Monitoring in Ministries and State Departments;
- (h) undertake independent ex-post evaluation of projects on sample basis in accordance with the format provided for under the First Schedule to these Regulations;
- (i) provide quality assurance on monitoring and evaluation data uploaded in the Public Investment Management Information System;
- (j) prepare quarterly and annual consolidated project monitoring reports and submit to the Cabinet Secretary responsible for finance to inform policy and decision making; and
- (k) prepare project analytic report for informing the public expenditure reviews and annual progress report for decision making.

12. The Department responsible for planning at the County Government shall have the following responsibilities in respect of public investment process—

Responsibility of the department of planning at County level.

- (a) convene public participation and stakeholder consultation forums in order to identify County, sectoral and strategic priorities to be included in County integrated development plans;
- (b) coordinate development of County, sectoral and strategic plans;
- (c) build and strengthen the capacity of the County Government and its entities on the use of Public Investment Management processes, tools and techniques;
- (d) provide adequate and skilled staff for units responsible for Project Planning and Monitoring in County Governments;
- (e) carry out independent mid-term and end-term evaluations for medium, large and mega projects on a sample basis in accordance with the format provided for under the First Schedule to these Regulations;
- (f) undertake independent ex-post evaluation of projects on a sample basis in accordance with the format provided for under the First Schedule to these Regulations;
- (g) provide quality assurance on monitoring and evaluation data uploaded in the Public Investment Management Information System; and
- (h) prepare quarterly and annual consolidated project monitoring reports and submit to the County Executive Committee Member responsible for finance to inform policy and decision making.

13. Notwithstanding the responsibilities of the accounting officers provided for under these Regulations, the accounting officers shall further have the following responsibilities in respect of public investment process—

Role of
accounting
officers.

- (a) approve and facilitate resources necessary for project pre-investment activities and effective implementation of projects;
- (b) be accountable for successful implementation of projects based on key performance indicators in the project implementation plan;
- (c) build and strengthen the capacity of their respective entities on the use of Public Investment Management processes tools and techniques;
- (d) be responsible for efficient and effective utilization of resources that will be expended in project execution;
- (e) monitor, track and report on the financial and non-financial status of projects and programmes;
- (f) be responsible for all procurements to ensure the success of the project on time, within budget and to the required standards;
- (g) ensure that project agreements or contracts are consistent

- with the financing agreements for effective and efficient implementation of the project;
- (h) declare all projects within their jurisdiction which are funded by development partners to the National Treasury or County Treasury, as the case may be;
- (i) provide the primary link and enhance collaboration between the relevant stakeholders, including Government, development partners, project financiers and coordinate implementation to ensure efficient and effective delivery of the project objectives;
- (j) ensure emerging issues are addressed to attain effective implementation of the project;
- (k) be responsible for monitoring, evaluation and reporting of the project including uploading and updating project monitoring and evaluation data in the system;
- (l) be responsible for successful project closure and transfer of assets and liabilities in accordance with the provisions of the project contract, project document or financing agreement and any other relevant laws;
- (m) update their respective websites with details of approved projects from the pipeline module of the Public Investment Management Information System;
- (n) be responsible for carrying out end-term project evaluation upon completion of the project;
- (o) ensure that projects emanating from the State or County corporation, or autonomous or semi-autonomous government agency are cleared by the Project Committees, himself or herself, and the Board of the respective corporation or agency and the relevant Cabinet Secretary or County Executive Committee Member before submission to the Public Investment Management Department / Unit at the National Treasury or a County Treasury;
- (p) may appoint public officers who are immediately in charge of implementation of a project or program to be the holders of authority to incur expenditure on his or her behalf;
- (q) in order to promote information sharing and coordination in public investment projects in accordance with the Intergovernmental Relations Act, 2012—
- (i) participate in Sector Working Groups in both National and County levels;
 - (ii) submit a status report to the Intergovernmental Budget and Economic Council for coordination on all ongoing and pipelined projects;
 - (iii) constitute joint committees in accordance with Section 23 of the Intergovernmental Relations Act, 2012; and
- (r) receive recommendations from the Project Committee and

make appropriate decision

14. (1) An accounting officer in the National Government or its Entity shall establish a Project Committee comprising of appropriate officers as follows—

Establishment of Project Committee.

- (a) Head of a Directorate or a Department, who shall be the chairperson;
- (b) an officer from finance department;
- (c) a maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;
- (d) one officer from any department of the National Government Ministries Departments and Agencies; and
- (e) head of planning or his or her representative, who shall be the secretariat.

(2) The members shall be appointed from departments within the Ministries, departments or agencies or other relevant government agencies

15. (1) An accounting officer in a County Government or its entity shall establish a project committee comprising of the appropriate officers as follows—

Establishment of County project committee(s).

- (a) Head of a Directorate or a Department, who shall be the chairperson;
- (b) one officer from finance department;
- (c) a maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;
- (d) one member from any department of a County Government Ministries, departments and agencies; and
- (e) head of planning or his or her representative, who shall be the secretariat.

(2) The members shall be appointed from departments within the Ministries, departments and agencies or other relevant County Government agencies;

16. The functions of the project committees established under Regulations 14 and 15 shall be—

Functions of the project committees.

- (a) to review project concept notes and make recommendations to the accounting officer for decision making within thirty days;
- (b) to review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision

making within thirty days;

- (c) to identify the potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;
- (d) to prioritize projects based on the National Government ~~Ministries, Departments and Agencies or County Government Ministries, Departments and agencies Strategic Plan, Medium Term Plan, and National and County development plans;~~
- (e) to recommend the mode of project financing;
- (f) to provide guidance on any changes in the project design; and
- (g) ensure projects are aligned to the National Development Plans.

PART III—PUBLIC INVESTMENT MANAGEMENT PROCESS

17. The Public Investment Management Process shall comprise of the following six distinct and sequential stages—

Investment management stages.

- (a) Project Identification and Planning;
- (b) Project Pre-feasibility and pre-appraisal;
- (c) Project Feasibility and Appraisal;
- (d) Project Selection for Budgeting;
- (e) Implementation, Monitoring, Evaluation and Reporting; and
- (f) Project Closure, Sustainability and Ex-post Evaluation.

Project Identification and Planning

18. (1) An accounting officer shall ensure all projects are identified through stakeholders' consultation process using a top-down or bottom-up process and that no project concept note is initiated for a project that is being implemented by any other National or County Government agency.

Project Identification and Planning.

(2) Any project identified shall be aligned to the National and or County development plans, sector plans and strategic plans.

(3) All projects, irrespective of the mode of financing, shall require a Project Concept Note prepared in accordance with the format specified in the Second Schedule of these Regulations using internal capacity within government.

(4) Small projects shall require only Project Concept Notes without a pre-feasibility or feasibility study and shall be approved by the accounting officer for uploading in the project pipeline.

(5) Small projects that require specialised technical solutions may proceed to pre-feasibility and feasibility studies and where such studies are required, clearance shall be sought by the accounting officer from

the National Treasury or County Treasury, as the case may be.

(6) Medium, large and mega projects shall require a pre-feasibility and feasibility study in accordance with the format specified under the Third Schedule and the Fourth Schedule of these Regulations.

(7) An accounting officer shall—

- (a) ensure that project conceptual designs are done using the logical framework analysis and develop the logical framework matrix in accordance with the Second Schedule of these Regulations;
- (b) prohibit the splitting of medium, large or mega projects into small projects with the intention of circumventing any part of the Public Investment Management process;
- (c) ensure that project concept note for all projects are prepared by the relevant departments in accordance with the Second Schedule of these Regulations and submitted to the Project Committee for review and make recommendations to him or her;
- (d) consider the recommendations of the Project Committee on the project concept note and make a decision;
- (e) ensure that upon approval for medium, large and mega projects, the Concept Notes are submitted to National Treasury or a County Treasury for independent review and concurrence within thirty days before conducting a pre-feasibility study;
- (f) in case of a Project Concept Note emanating from a State or County corporation, or autonomous or semi-autonomous government agency, such a Project Concept Note is cleared by the Project Committee, himself and the Board of the respective corporation or agency and the relevant Cabinet Secretary or County Executive Committee Member before submission to the Public Investment Management Department or Unit at the National Treasury or County Treasury;
- (g) upon approval of the Project concept note for a small project, is submitted in the project pipeline of the Public Investment Management Information System.

Project pre-feasibility and pre-appraisal

19. (1) All medium, large and mega projects shall require a pre-feasibility study to identify and appraise the available alternative interventions that can be undertaken to solve an identified problem within the context of the country's strategic objectives and existing Government policy, legal and institutional framework.

Project pre-feasibility and pre-appraisal.

(2) The pre-feasibility study shall involve accessing all the potential alternative options available for addressing the problem identified by:

- (a) Exploring all potential alternative options using a multi-

criteria analysis that includes quality of results, risks, issues and assumptions in order to narrow down the potential alternative options to 3 as per the Third Schedule;

- (b) Comparing the 3 potential alternative options using qualitative and quantitative listing of advantages and disadvantages using a multi-criteria analysis including demand and marketing, technical and engineering, social and environmental, human resource and administrative, institutional and legal among others; and
- (c) Undertaking a cost benefit analysis or cost effectiveness analysis for the 3 identified alternatives using secondary data;
- (d) Select the best option

(3) The pre-feasibility study shall also be used to identify projects that can potentially be delivered effectively under Public-Private-Partnership arrangement in line with the PPP Act, 2021.

(4) The pre-feasibility study shall be undertaken with internal capacity or sourced from other government institutions:

Provided that where the accounting officer is using capacity from other government institutions, he or she shall facilitate them to undertake the pre-feasibility study.

(5) An accounting officer shall approve the use of external consultants only when such capacity does not exist within government.

(6) The pre-feasibility study shall be undertaken in accordance with the format specified under the Third Schedule of these Regulations.

(7) Pre-feasibility study report shall be reviewed by the Project Committee and recommendations submitted to the accounting officer for decision making within thirty days.

(8) Upon approval, the accounting officer shall submit the pre-feasibility study to the Public Investment Management Department at the National Treasury or County Treasury, as the case may be, for independent review and concurrence within thirty days.

(9) Upon clearance by the Public Investment Management Department at the National Treasury or County Treasury, the relevant accounting officer shall proceed to undertake feasibility study for the project.

(10) Projects identified under 19 (3) above shall be forwarded to the Public Private Partnership Directorate for processing as per the Public Private Partnership Act, 2021.

(11) Projects found not suitable for implementation under the Public Private Partnership arrangement by the PPP Directorate as per 19 (10) shall proceed to feasibility study as per these regulations.

Project feasibility and appraisal

20. (1) To enhance prudent use of public resources on feasibility

Project feasibility

studies the accounting officer shall ensure that—

and appraisal.

- (a) the total cost of a feasibility study of a project shall not exceed 5% of the total project cost estimated in the pre-feasibility study;
 - (b) the total budget on feasibility studies shall not exceed 5% of the total development budget of the Vote of National or County Government entity;
 - (c) where the threshold is exceeded, he or she seeks the approval of the National Treasury or County Treasury;
 - (d) the criteria provided under regulation 9(1)(h) by the National Treasury is complied with, where applicable; and
 - (e) the person or his or her associates who conducts a pre-feasibility and or feasibility study shall not be part of the implementation of the project.
- (2) The feasibility study shall be undertaken with internal capacity or sourced from other government institutions and where the accounting officer is using capacity from other government institutions, he or she shall facilitate them to undertake the feasibility study.
- (3) The accounting officer shall approve outsourcing of consultants only when such capacity does not exist within government.
- (4) A feasibility study for medium, large and mega projects shall be prepared detailing as a minimum, market and demand assessment; technical and engineering feasibility; environmental impacts; human resource and administrative capacity; legal and institutional capacity; financial/private and economic/social viability; social and distributive impacts; fiscal and risks analysis together with its long-term sustainability in accordance with the format provided for under the Fourth Schedule of these Regulations.
- (5) The accounting officer shall ensure that the results of the feasibility study are presented to the relevant stakeholders.
- (6) The feasibility study shall be submitted to the Project Committee for review and recommendations.
- (7) The Project Committee shall submit the recommendations of the feasibility study within thirty days to the accounting officer for decision making.
- (8) Upon approval by the accounting officer, the feasibility study and other project documents, including background documentation shall be submitted to the National Treasury or County Treasury, as the case may be, for independent review and concurrence within thirty days.
- (9) The feasibility study for a State or County corporation, or autonomous or semi-autonomous government agency shall be cleared by the Project Committee, and the Board of the respective state or county corporation or agency, the accounting officer and the relevant Cabinet Secretary or County Executive Committee Member before

submission to the National or County Treasury, Cabinet Secretary or County Executive Committee Member for finance for independent review and concurrence within thirty days.

(10) Upon clearance by the National Treasury or County Treasury the project details shall be uploaded in the Project Pipeline of the Public Investment Management System by the accounting officer.

(11) Re-appraisal of projects may be required in either one or a combination of the following cases—

- (a) where a project in the Project pipeline has taken more than three years without a budget provision;
- (b) change of project scope;
- (c) force majeure; or
- (d) any other case justified by the accounting officer with the approval of the National Treasury or County Treasury.

(12) Where the project is re-appraised the project approval process outlined in these Regulations shall apply.

Project selection for budgeting

21. (1) The National Treasury or County Treasury shall ensure that new projects are only considered when there is sufficient fiscal space after allocations for the implementation of ongoing projects have been made within the sector ceilings.

Project selection
for budgeting.

(2) The accounting officer shall ensure budgeting for public investments is in accordance with the budget guidelines issued by the National Treasury and County Treasury from time to time.

(3) The accounting officer shall ensure any new project presented for funding has received the necessary approvals from the Public Investment Management Department or Unit at the National Treasury or County Treasury, as the case may be, at Project Concept Note, Pre-Feasibility Study stage and or Feasibility Study stage.

(4) Before a project is included in the budget, the relevant accounting officer shall—

- (a) ensure that all conditions precedent are fulfilled, including land acquisition, compensation, stakeholder management and development partners' requirements have been met;
- (b) ensure that detailed designs have been completed and relevant approvals obtained where applicable;
- (c) ensure that the Project has received necessary regulatory approvals;
- (d) ensure that detailed resource requirements including funding and personnel to operationalize the project are planned for; and
- (e) ensure that the project details are captured in the project pipeline within the Public Investment Management

Information System.

(5) Where the above preliminaries have not been met, the accounting officer shall only request for budgetary resources to meet these prerequisites in that financial year.

(6) Financing agreements with development partners shall only be executed for projects that have been approved and submitted in the Project Pipeline.

(7) An accounting officer shall ensure that projects that have fully met the conditions under 21 (4) are allocated adequate funding in that financial year.

(8) Accounting officers shall disclose any ongoing projects that have not been funded during the financial year to the National Treasury or County Treasury, as the case may be, when submitting their budgets for the succeeding year.

(9) An accounting officer shall ensure that all ongoing multi-year projects are allocated adequate funds in accordance with the signed contract and within the projected ceilings before a new project is allocated budgetary resources.

(10) The accounting officer in every National or County Government entity, while requesting for funding, shall prioritize the projects which have already received approval based on the Project Concept Note, pre-feasibility and feasibility study, as the case may be, taking into consideration the Government's strategic initiatives, and National development priorities.

(11) The National Treasury or County Treasury shall consider the pipelined projects and ongoing projects resource requirements to inform the National Budget Review and Outlook Paper or the County Budget Review and Outlook Paper budget sector ceilings, as the case may be.

(12) Accounting officers shall only consider projects to be included in the budget which have been pipelined by the 30th June of the preceding financial year.

(13) The Sector Working Groups shall consider projects in the project pipeline based on the set criteria such as sector ceilings and fiscal strategy, in resource bidding and budget allocation.

(14) The National Treasury or County Treasury shall work with the Sector Working Groups during the resource bidding and budget allocation process.

(15) The National Treasury or County Treasury shall ensure that no budget allocations are made outside the approved budget cycle and the list of projects in the project pipeline except where a Cabinet or County Executive Committee decision has been made to include the project.

Implementation, monitoring, evaluation and reporting

22. (1) The relevant accounting officer shall establish a Public Implementation,

Finance Management Standing Committee in accordance with regulation 18 of the Public Finance Management Regulations, 2015 with the designated responsibility for monitoring project implementation to ensure delivery of the project on time, within budget and in accordance with the design specification.

monitoring,
evaluation and
reporting

(2) The Head of the department or unit responsible for planning shall be a member of the Public Finance Management Standing Committee.

(3) In the process of discharging his or her duties under this regulation, an accounting officer shall—

- (a) ensure that all contracts signed by the procuring entities are uploaded in the Public Investment Management Information system;
- (b) ensure that project procurement principles are strictly adhered to as enshrined in the Constitution, the Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act, 2015 and the Regulations made thereunder and any other related legal instruments;
- (c) ensure that no certificate shall be paid by the procuring entity unless that certificate has been uploaded in the Public Investment Management Information system;
- (d) integrate project requirements in the annual work-plan, annual procurement plan and cash flow plan, which will form the basis for budget execution and performance contracting;
- (e) appoint a contract implementation team as provided for in section 151 of the Public Procurement and Asset Disposal Act, 2015:

Provided that where an accounting officer has not appointed a contract implementation team, he or she shall designate a project manager or a project coordinator with relevant technical expertise to implement the project as per the project implementation plan.

- (f) ensure that funds requested in accordance with Annual Work-plans, Annual Procurement Plan and Annual Cash Flow Plans and any implementation delays and challenges are captured in the Public Investment Management Information System;
- (g) ensure that all public investment projects are procured and delivered on time, within budget and in accordance with the design specification;
- (h) ensure that all project related tax exemptions shall be processed through the project exemptions module in the Public Investment Management Information System before submission to the Cabinet Secretary or County Executive

Committee for approval;

- (i) ensure that projects are monitored against plans, targets, and milestones set out in the Project Implementation plan and the signed project contract or project implementation document;
 - (j) ensure that project data is updated on the Public Investment Management Information System at least on a monthly basis and relevant reports are generated from this system;
 - (k) submit consolidated project performance report to the National Treasury or County Treasury on a quarterly and annual basis within the deadlines provided in the Public Finance Management Act;
 - (l) disclose reasons for any stalled projects and propose recommendations to the National or County Treasury;
 - (m) ensure that every project monitoring report includes financial and non-financial data clearly providing for the following—
 - (i) monthly progress implementation reporting;
 - (ii) cumulative quarterly progress implementation reporting;
 - (iii) cumulative annual progress implementation reporting; and
 - (iv) risk, assessment of emerging challenges and mitigation measures;
 - (n) enforce the continuous update of project implementation in accordance with the project implementation plan in the Public Investment Management Information System;
 - (o) evaluate projects during implementation in accordance with these Regulations as provided for in the First Schedule of these Regulations;
 - (p) ensure evaluation reports are uploaded in the Public Investment Management Information System.
- (4) The accounting officer shall assess the internal capacity to manage a project and where such capacity is inadequate seek assistance from other government entities before hiring external expertise.
- (5) For project being implemented through multiple agencies, a project implementation team shall be established with representation from the agencies charged with the responsibility of monitoring the delivery and ensuring that all project outputs are efficiently and effectively met.
- (6) Projects implemented through multiple agencies shall require the establishment of a Project Steering Committee comprising of accounting officers which shall be responsible for providing strategic guidance and direction in project implementation.
- (7) The Project Steering Committee may appoint one of the procuring entities to procure the project on their behalf, in accordance

with the Public Procurement and Asset Disposal Act, 2015.

(8) In cases where a project is contracted to foreign contractors and technical assistance, accounting officers shall ensure capacity and skills transfer to local staff during the entire project implementation period is in accordance with the Public Procurement and Asset Disposal Act, 2015 and the Regulations made thereunder.

~~(9) The cumulative quarterly project implementation report shall be submitted to National Treasury or County Treasury by the accounting officers in the Public Investment Management Information System every quarter on or before the 15th day of the succeeding month.~~

(10) The National Treasury or County Treasury shall analyse cumulative quarterly project implementation report submitted by accounting officers in the Public Investment Management Information System every quarter and prepare a consolidated project implementation status report on or before the 30th day of the succeeding month to inform the budget execution process and public investment decisions.

(11) The accounting officer shall, where necessary, approve any proposed project adjustments or variations in accordance with the provisions in the Public Procurement and Asset Disposal Act, 2015 and the resultant expenditure shall be contained within the appropriation under the respective Vote.

Project Reporting

23. (1) An accounting officer shall ensure that the project progress report is updated regularly but at least on a monthly basis and in line with the monitoring plan.

Project reporting.

(2) An accounting officer shall prepare project completion reports and submit them to the National Treasury or County Treasury, as the case may be, in standard templates provided in the Fifth Schedule of these Regulations through the Public Investment Management Information System.

(3) The National Treasury or County Treasury shall prepare a consolidated quarterly cumulative and annual project reports incorporating the comments from the department responsible for planning with key recommendations and submit it to Cabinet to inform planning, policy and budgeting of public investments.

(4) An accounting officer shall prepare a report on quarterly and annual basis on the performance of the projects and any interventions and submit to National Treasury or County Treasury in standard templates provided in the Sixth Schedule of these Regulations through the Public Investment Management Information System.

(5) Ad-hoc or any other reports necessitated by unforeseen circumstances shall be prepared and uploaded in the Public Investment Management Information System by the responsible accounting officer.

(6) An accounting officer shall prepare all project related tax

exemptions and submit through the Public Investment Management Information System and any request for project related tax exemptions shall be approved by the accounting officer in the Public Investment Management Information System in accordance with the format provided for under the Seventh Schedule (a) and (b) of these Regulations.

(7) All reports in the Public Investment Management Information System shall be published and publicized by the accounting officer in accordance with the provisions of the Access to Information Act.

Project closure, sustainability and ex-post evaluation

24. (1) An accounting officer shall prepare a project completion certificate and or a project completion report confirming that the project has delivered all the outputs as per the standards and specifications set out in the contract or project implementation plan.

Project closure.

(2) The project completion certificate shall be prepared in the format provided for under the Eighth Schedule of these Regulations.

(3) An accounting officer shall upload the project completion certificate and the project completion report in the Public Investment Management Information System.

(4) Where a project implementation unit exists, and the project either comes to an end or is terminated, the accounting officer shall ensure that project technical and financial closure are done in accordance with the financing agreement, the Act, the Public Procurement and Asset Disposal Act, 2015, and the Public Audit Act, 2015.

(5) The relevant accounting officer shall ensure project accountability closure reports including final financial report and audit report are uploaded in the system.

(6) The project is deemed to have been successfully completed when the project outputs have been delivered or when the contractor has fully discharged his or her responsibility and handed over the project to the relevant accounting officer.

(7) The relevant accounting officer shall record the asset in the asset register indicating the actual value of the asset and ensure that the same is recorded in the relevant asset management information system.

(8) All projects' contract implementation, closure and termination procedures shall be guided by the Public Procurement and Asset Disposal Act, 2015.

(9) All project financing agreements shall have an exit provision clearly providing for conditions under which each party may terminate or exit the financing agreement and its implications on the specific project agreement(s).

(10) Any contract signed pursuant to a financing agreement shall be aligned to the terms and conditions of the agreement and an accounting officer who intends to terminate the contract shall be guided by the provisions of the financing agreement, the project contract and

other relevant laws while making recommendations to the Cabinet Secretary before terminating the project contract.

(11) Where a contractor has failed to meet his or her obligations as per the contract or project documents, the accounting officer shall ensure the contractor is sanctioned.

~~(12) An accounting officer shall, under either of the circumstances listed in paragraphs (9), (10) and (11), endeavour as a first step to negotiate with third parties to terminate the contract in accordance with the provisions of the contract or financing agreement,~~

(13) Where a contractor or a development partner initiates a termination of a project contract or a project, as the case may be, the accounting officer shall proceed in accordance with the exit provisions provided in the contract or the financing agreement.

(14) Plant and equipment or any other asset purchased using public funds shall be handed over to the government upon completion of the project and recorded in the asset management information system.

(15) Upon completion of the project, plant and equipment or any other asset purchased by a contractor that had been exempted from tax shall revert to the government or alternatively the contractor shall pay the taxes due promptly in accordance with the relevant law.

(16) Upon exit or termination of a contract or a project before completion, the accounting officer shall ensure the following—

- (a) a certificate of works in progress and a termination report is issued by the relevant department;
- (b) where applicable, the project manager submits an exit report;
- (c) a final evaluation is undertaken and a report is submitted;
- (d) the statutory obligations are settled in accordance with the relevant laws;
- (e) the residual obligations are settled in accordance with the contractual agreement and the relevant laws;
- (f) the accomplished and the unaccomplished works are recorded in the Public Investment Management Information System and the asset management information system for assets; and

25. (1) An accounting officer shall ensure that completed projects continue providing the intended services and benefits by ensuring that—

- (a) the intended stakeholders are engaged throughout the life of the project;
- (b) regular and periodic maintenance of assets is done post completion;

Project
sustainability.

- (c) there is availability of adequate resource and capacity to operate and maintain the asset;
- (d) reports for regular and periodic maintenance are compiled and updated in the management information system for assets including any key recommendations made thereof.

(2) An accounting officer shall ensure scheduled routine maintenance is carried out provided that such scheduled routine maintenance are approved in accordance with these Regulations.

26. (1) An accounting officer shall, within five years after project completion, undertake a project ex-post evaluation on a sample basis and submit a report to the National Treasury or County Treasury, as the case may be, and copy to the department responsible for planning in a standard template provided in the First Schedule of these Regulations through the Public Investment Management Information System.

Project ex-post evaluation.

(2) An accounting officer shall allocate adequate resources for undertaking project ex-post evaluation within the sector ceilings.

27. (1) The National Treasury or County Treasury, as the case may be, shall establish a Resource Allocation Panel to review resource allocations by Sector Working Groups and make recommendations.

Establishment of the Resource Allocation Panel.

(2) The Resource Allocation Panel referred to under paragraph (1) shall be situated at the National Treasury or County Treasury, as the case may be, and shall consist of the following member Departments of the National Treasury or County Treasury—

- (a) Director of Budget or his or her equivalent in case of County Government, who shall be the Chairperson;
- (b) Public Investment Management Department;
- (c) Macro and Fiscal Affairs Department or its equivalent in County Government;
- (d) Resource Mobilization Department or its equivalent in County Government;
- (e) Intergovernmental Fiscal Relations Department or its equivalent in County Government;
- (f) Budget Department, being the Secretariat; and
- (g) any other officer of the National Treasury appointed by the accounting officer of the National Treasury.

28. The Resource Allocation Panel shall, among other functions—

Functions of the Resource Allocation Panel.

- (a) review the prioritized projects in the pipeline;
- (b) review budget and project implementation documents for ongoing projects;
- (c) review absorption capacity for financed projects;
- (d) review performance of ongoing projects based on reports

- from The National Treasury's Public Investment Management Department and any other reports;
- (e) review proposed budget allocations for compliance with budget circulars;
 - (f) ensure overall ceilings as provided in the fiscal framework are maintained including medium term ceilings;
 - ~~(g) review resource allocations by the Sector Working Groups based on government priority programmes and make recommendations to Principal Secretary of the National Treasury or the chief officer of a County Treasury; and~~
 - (h) ensure that all conditions for project readiness such as land acquisition and project detailed designs are addressed, where applicable, before allocation of resources or signing of financing agreements.

PART IV—PUBLIC INVESTMENT MANAGEMENT INFORMATION SYSTEM

29. (1) The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System.

Investment
Management
Information
System.

(2) The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.

(3) The Public Investment Management Department at the National Treasury shall be responsible for overall Public Investment Management Information System administration and shall assign role-based user and access rights to accounting officers of National Government and County Governments and their entities.

(4) The Public Investment Management Department at the National Treasury shall ensure that projects uploaded in the project pipeline of the Public Investment Management Information System are issued with unique identifier codes which shall be mapped to the Standard Chart of Accounts.

(5) Only projects processed, appraised and pipelined through the system shall receive public funding including Appropriation in Aid.

(6) All project information, including approvals shall be processed through the Public Investment Management Information System.

(7) The Public Investment Management Information System shall provide for a public interface where the public will be able to access project information in accordance with the Access to Information Act, 2016.

PART V—MISCELLANEOUS PROVISIONS

30. (1) A project may, under exceptional circumstances and in accordance with section 21 of the Act, be exempted from the requirements of these Regulations by an accounting officer with the

Exemption and
amendment.

approval from the National Treasury or County Treasury, as the case may be.

(2) An accounting officer may amend project details in the project pipeline in the Public Investment Management Information System subject to approval from the National Treasury or County Treasury, as the case may be.

31. Any disputes between the two levels of Government arising from the implementation of these Regulations shall be handled in accordance with section 35 of the Intergovernmental Relations Act, 2012.

Handling of disputes.

No. 2 of 2012.

32. A person commits an offence where that person fails to comply with the provisions of these Regulations and shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding ten million shillings, or to both.

Non-compliance with these Regulations.

33. The savings and transitional provisions in these Regulations shall be as specified in the Ninth Schedule of these Regulations.

Transition and savings

FIRST SCHEDULE
 [Regulation 11(f), 11(h), 12(e), 12(f), 22(3)(o) & 26(1)]
PROJECT EVALUATION REPORT TEMPLATE

a) Project Basic Data		
Project Name		
Project Reference Number:	Contract(s):	
Project Threshold:	Sector:	
Commencement date:	Total Project Cost:	Completion Date:
b) Executive Summary		
Section 1: Introduction		
c) Background		
Briefly describe the background of the project in terms of the overall developmental objectives.		
d) Scope of evaluation		
Briefly describe what will be covered and what will not be covered by the evaluation.		
e) Evaluation approach or methodology		
Brief describe the approach that will be used in conducting the evaluation.		
f) Limitations of the evaluation		
Briefly describe the limits of the evaluation.		
Section 2: Summary of the findings related to the following		
a) Project performance assessment:		
Did the project achieve the objective that it was set to achieve? Describe this by enumerating the progress towards achieving the overall objective of implementing the project.		
b) Relevance of the project design:		
Did the project as conceptual design address/respond to the identified problem or made use of the advantages brought in by the opportunity? Show how this was done?		
c) Effectiveness in the achievement of outcomes and outputs:		
Did the project achieve the objective it was meant to achieve? Provide a brief description of the Project, the context in which it was designed and implemented. State the project development objective or the project purpose as set out in the PCN and assess progress. Unanticipated outcomes should also be accounted for. The consistency of the assumptions that link the different levels of the results chain in the PCN should also be considered Explain how?		
d) Efficiency in terms of timelines and resource use:		
Were the desired results achieved in time, budget and the right quality? Explain how using appropriate analysis.		

e) Impact and progress towards the achievement of the developmental objective:
What are the effects occurring during implementation, completion, and during utilization of the project outputs (this could be intended or un-intended effects)? Did the project cause the effects (contributory or attributable)? Explain.
f) Sustainability in terms of financial, institutional and technical capacities, partnerships with stakeholders, environmental and social sustainability:
Describe the measures that have been in place to ensure that the project benefits continue to be enjoyed after the project implementation is completed. This can be shown by reviewing the operational costs, human resource and institutional arrangements in place to foster project sustainability. How will emerging issues be addressed?
g) Any other findings in terms of unanticipated or additional outcomes.
Section 3: Summarize the lessons learnt and recommendations related to the following:
a) Relevance of the project design.
b) Effectiveness in the achievement of outcomes and outputs
c) Efficiency in terms of timelines and resource use
d) Impact and progress towards the achievement of the developmental objective
e) Sustainability in terms of financial, institutional capacities, partnerships with stakeholders, environmental and social sustainability.
f) Other findings in terms of unanticipated or additional outcomes

SECOND SCHEDULE
 [Regulation 18(3),18(7)(a) &18(7)(c)]
PROJECT CONCEPT NOTE TEMPLATE

SECTION 1: PROJECT PROFILE			
Project Name:			
Project Reference Number:			
Ministry:			
Implementing Agency (MDA):			
Initiating Department / Division / Section / Unit:			
Budget Vote (where applicable):			
Estimated Project Cost:			
MTEF Sector:			
Accounting Officer:			
Official Contact Details (Provide email, telephone number, postal and physical address):			
Project Threshold:			
Project Geographic Location (Provide GPS Coordinates here) :			
County:	Sub-County:	Ward:	Village:
Planned Start Date:			
Planned End Date:			
Date of Submission:			
SECTION 2: PROJECT BACKGROUND			
1. Situation Analysis			
Provide a background of the project:			
a) Briefly describe the current situation that rationalizes the project b) Briefly describe past and on-going interventions to address the situation; quote official statistics including past trends to support your narrative, where applicable.			
2. Problem Statement			
Provide details of the problem to be addressed in terms of challenges, constraints and gaps:			
1. Nature of the problem			

<p>2. Scope of the problem (How widespread or the magnitude of the problem)</p> <p>3. State the likely causes and effects of the problem both direct and indirect.</p> <p>4. Provide any alternative options that may be available to address the problem.</p>
<p>3. Relevance of the Project Idea</p> <p>Justify the need for the proposed project by:</p> <p>a) Linking the project to the National / County Development Plan strategic goals and objectives that the proposed project is expected to contribute to;</p> <p>b) Linking the proposed project to Sector strategic objectives and strategies by describing the sector outcomes that the project is expected to contribute to;</p> <p>c) Show the need for the project by analyzing and describing the quantitative indicators of demand for the services or goods to be delivered by project using readily available information.</p> <p>d) Describe the rationale for the government to intervene through the project, whether or not the private sector can deliver the project objectives and the consequences of not implementing the project.</p> <p>e) Describe the compatibility between the project and the timeframe for achieving the strategic goals and objectives that it is intended to serve.</p>
<p>4. Needs Assessment</p> <p>Identify the target final beneficiaries (i.e. the end users of the services to be provided by the project) and give approximate assessment of their likely demand for the services provided by project by providing the following information:</p> <p>a) Specific target group of final beneficiaries intended to benefit from the proposed project.</p> <p>b) Approximate estimate of how many end-users there will be for the services provided by the project, indicating the units of measurement (individuals, households, business)</p> <p>c) Estimate the physical demand for the services provided by the project on completion and its growth rate, indicating the unit(s) of measurement (e.g. cubic metres of water per day, vehicles per day; and</p> <p>d) Proposed physical capacity of the proposed facilities, indicating the unit(s) of measurement e.g. cubic metres of water per day, or square metres of usable space.</p> <p>e) Identify potential benefits and make a preliminary qualitative assessment by providing the following information:</p> <p>i) The main benefits of the asset that will be created to the end-users;</p> <p>ii) Any significant external benefits or negative effects for non-users; and</p> <p>iii) Any significant differences in benefits between alternatives if any, with brief explanations.</p>
<p>SECTION 3: SCOPE OF THE PROJECT</p>
<p>Describe the scope of the project by defining the boundaries of the proposed project in terms the outputs or deliverables of the project or the statement of work that needs to be</p>

accomplished to deliver the product, service or result required.

SECTION 4: LOGICAL FRAMEWORK

This section will show intervention logic or the result chain in a logical manner with a detailed description of the project goal, objectives, outcomes, outputs and inputs

a) Goal

State the goal in the Medium-Term Plan/County Integrated Development Plan that the project intends to achieve. Also define the indicator that will be used to measure success of the project against the goal and briefly explain how information on this indicator shall be obtained.

b) Project Objectives/Outcomes

Define the project objectives and the corresponding outcomes. These include the effects that will follow from the utilization of products or services (outputs) delivered by the project. These could be the eventual benefits to society that the project interventions are intended to achieve and are reflected in terms of what people will be able to do better, faster, or more efficiently, or what they could never do before.

For each project outcome identified, define at least one indicator that will be used to measure performance of the project against the relevant outcome and briefly explain how information on this indicator (s) shall be obtained

c) Proposed Project Outputs

Describe the direct outputs that the project is expected to deliver. Outputs are the immediate and concrete deliverables of the implemented activities and resources used. For each project output identified, define at least one indicator that will be used to track progress and the means of verification.

d) Project Activities and Inputs

For each output identified describe the major activities that should be implemented together with the inputs or resources required to deliver the planned results. To obtain the results of a project a number of activities have to be implemented using various resources or inputs. A table in the following format is sufficient.

e) Project Logical Framework Matrix

Narrative	Indicators	Sources/Mean of verification	Assumptions
Goal (MTP/CIDP)			
Project Purpose			
Project Outcomes			
Key Output			
Key Activities			

NB: Add additional rows for outcomes, outputs and activities as necessary

SECTION 5: INSTITUTIONAL ARRANGEMENTS

1. Institutional Mandate

Describe how the project is linked to the mandate of the institution. Briefly explain the mandate of the institution while linking it to the objectives of the project. Explain how the project outcomes will assist the institution deliver on its mandate.			
2. Management of the Project			
Demonstrate the technical, managerial and financial capacity of the implementing agency to deliver the project. Describe the institutional arrangements in place within the implementing agency that will assist in managing and controlling the project to completion. Also describe the human resources available in the institution showing how this will be harnessed to deliver on the project. Explain how shortfall in expertise will be handled and sources of funding to do that. This can also be better expressed by showing previous experience in handling projects of the same magnitude.			
3. Monitoring and evaluation arrangements			
Describe how the project will be monitored and evaluated in order to ascertain the progress towards achieving its intended objectives. Describe the M&E mechanisms in place to monitor and evaluate the project to completion. Briefly describe the resources, both budgetary and manpower, available including the sources for monitoring the project. Describe who is responsible to track the project and how data on projects will be gathered, the reporting channels within the implementing agency and how lessons learnt will be recorded, analyzed and used to improve future interventions.			
4. Risk and Mitigation Measures			
Describe the potential risks that can derail the project, the likelihood of occurrence, the impact of such risks and strategies for mitigating them. A simple table in this format will be sufficient.			
Risks	Likelihood/Probability	Risk Impact	Mitigation Strategy
	(High, medium or low as categories)	(High, medium or low as categories)	
5. Project Stakeholders Management			
Describe the stakeholders that the project has to constantly engage and their level of influence and interest among others. List all the government agencies, utilities or regulatory institutions that will need to be involved in the planning and implementation of the proposed project including any legal issues that will need to be addressed. A simple table in this format will be sufficient.			
Stakeholder	Level of influence	Engagement Strategy	
6. Project Readiness			
Describe how prepared the implementing agency to deliver the project by providing the following information:			
a) Have the project preliminary and detailed designs been prepared and approved?			

- b) Whether the land been acquired or site readiness?
- c) Have necessary regulatory approvals been obtained?
- d) What government agencies and stakeholders will be involved in the preparation of the Project and what roles they will play in project development and approval?
- e) Have you undertaken consultations with other Government agencies in order to improve synergy and avoid duplication of effort?

If the answer is no to any of the above questions, then confirm whether this is part of the project implementation plan.

Confirm whether the project can be phased or scaled down.

SECTION 6: FINANCIAL INFORMATION

A. Capital Cost (Kshs.) to complete the project:

Estimate the capital costs required to implement the project as follows:

- a) Consultancy, detailed design and legal fees:
- b) Land Acquisition Costs:
- c) Site Access, Preparation and Utility
- d) Construction
- e) Plant and Equipment
- f) Fixtures and fittings:
- g) Other capital costs

B. Recurrent Costs (Kshs.) to complete the project:

Estimate the recurrent costs required to implement the project as follows:

- a) Labour cost
- b) Operating Costs
- c) Maintenance Costs
- d) Others

C. Total Cost Breakdown in Financial Year

FY 1	FY 2	FY 3	FY 4	FY 5
Total (KShs.)	Total (KShs.)	Total (KShs.)	Total (KShs.)	Total (KShs.)

D. Proposed Source of Financing

- a) Government of Kenya only

THIRD SCHEDULE
 [Regulation 18(6), 19(2)(a) and 19(6)]
PRE-FEASIBILITY STUDY TEMPLATE

SECTION 1: PROJECT PROFILE			
Project Name:			
Project Reference Number:			
Date of Approval of the Concept Note:			
Ministry:			
Implementing Agency(ies) (MDA):			
Initiating Department / Division / Section / Unit:			
Budget Vote (where applicable):			
Estimated Project Cost:			
MTEF Sector:			
Accounting Officer:			
Official Contact Details (Provide email, telephone number, postal and physical address):			
Project Threshold:			
Project Geographic Location (Provide GPS Coordinates here):			
County:	Sub-County:	Ward:	Village:
Planned Start Date:			
Planned End Date:			
SECTION 2: PROJECT BACKGROUND			
1. Situation Analysis			
Provide a background to the project idea:			
a) Briefly describe the current situation that rationalizes the project			
b) Briefly describe past and on-going interventions to address the situation; quote official statistics including past trends to support your narrative where applicable.			

2. Problem Statement		
Provide details of the problem to be addressed in terms of challenges, constraints and gaps:		
<ul style="list-style-type: none"> a) Nature of the problem b) Scope of the problem (How widespread or the magnitude of the problem) c) State the likely causes and effects of the problem both direct and indirect. 		
3. Relevance of the Project Idea		
Justify the need for the proposed project by:		
<ul style="list-style-type: none"> a) Linking the project to the National / County Development Plan strategic goals and objectives that the proposed project is expected to contribute to; b) Linking the proposed project to Sector strategic objectives and strategies by describing the sector outcomes that the project is expected to contribute to; c) Show the need for the project by analysing and describing the quantitative indicators of demand for the services or goods to be delivered by project using readily available information. 		
SECTION 3: STRATEGIC OPTION ANALYSIS		
a. Analysis of Options		
a) Potential Alternative Options		
List all potential options for solving the problem identified. Then complete the following sections for each alternative option:		
Alternative Option 1 <Name-of-Option>		
a) Description		
Provide a detailed description of the option and list its core components. Describe the the option and explain how it can address the problem identified.		
b) Assessment		
Describe the methods used to determine the likelihood that the option will meet all the requirements or solve the identified problem. For each method, describe how it was or will be undertaken and the quality of the result.		
c) Results		
Use the following table to score the results of the assessment and describe the methods used:		
Requirement	Pre-Feasibility Score	Assessment Method

Total Score									
Repeat this for option 4, 5,6 etc.									
b. Evaluation of the best alternative options									
From the results of the ranking above select the 3 alternative options with the highest score then:									
<ul style="list-style-type: none"> a) Compare these alternatives using qualitative and quantitative listing of advantages and disadvantages using a multi-criteria analysis including technical, environmental, social, legal and administrative analysis among others; and b) Undertake a cost benefit or cost effectiveness analysis for the identified alternatives. 									
SECTION 4: FEASIBILITY OPTION									
Based on the results of the assessment above, identify the option with the highest score and positive evaluation results using net present value/net present costs as the option that is most likely to solve the problem identified to proceed for a full feasibility study. For the selected option:									
a) PPP Candidate									
Based on the results of the assessment above identify whether the project is a potential PPP candidate.									
b) Update Costs									
Update estimates of the project's capital costs. The estimates of the project's total capital cost should be as updated to reflect the realities of the pre-feasibility study. Please provide the source of information and justification for the amount stated									
c) TORs on Feasibility Study									
From the findings of the pre-feasibility study develop the terms of reference for the preparation of the feasibility study									
SECTION 6: APPENDIX									
Supporting Documentation. Attach any documentation you believe is relevant to the Pre-Feasibility Study, including:									
<ul style="list-style-type: none"> a) Market research documents and statistics b) Detailed problem analysis and documentation of requirements c) Risk assessment reports d) Other relevant information or correspondence 									

FOURTH SCHEDULE
[Regulation 18(6) and 20(4)]
FEASIBILITY STUDY TEMPLATE

SECTION I: PROJECT PROFILE

SECTION I: PROJECT PROFILE			
Project Name:			
Project reference number:			
Date of Approval of the Pre-Feasibility:			
Ministry:			
Implementing Agency (MDA):			
Initiating Department / Division / Section / Unit:			
Budget Vote (where applicable):			
Estimated Project Cost:			
MTEF Sector:			
Accounting Officer:			
Official Contact Details (Provide email, telephone number, postal and physical address):			
Project Threshold:			
Project Geographic Location (Provide GPS Coordinates here):			
County:	Sub-County:	Ward:	Village:
Planned Start Date:			
Planned End Date:			
Executive Summary			
In this section of the template, describe any key headline information from the components of the feasibility assessment the options evaluated, key results and recommendations.			
Section 1: Introduction			
Describe the following:			
<ul style="list-style-type: none"> a) Project Background: Rationale and genesis, b) Objectives of the feasibility study c) Approach and methodology of the feasibility study d) Organization of the feasibility study 			

Section 2: Market/ Demand Module

This section assesses the need for public investment which will involve the elements listed below:

- a) **Problem Statement.** Describe the problem to be addressed in terms of challenges, constraints and gaps giving the (a) Nature of the problem;(b) Scope of the problem (How widespread or the magnitude of the problem) and (c) State the likely causes and effects of the problem both direct and indirect. .
- b) **Relevance of the Project Idea.** Justify the need for the proposed project by:(a) Linking the project to the National / County Development Plan strategic goals and objectives that the proposed project is expected to contribute to;(b) Linking the proposed project to Sector strategic objectives and strategies by describing the sector outcomes that the project is expected to contribute to;(c)Show the need for the project by analysing and describing the quantitative indicators of demand for the services or goods to be delivered by the project using empirical data.
- c) **Proposed Project Interventions.** Describe the project investments / outputs that need to be undertaken to address the problem as per recommendations of the pre-feasibility study
- d) **Stakeholders.** Identify the key stakeholders that are likely to be affected by the interventions.
- e) **Demand analysis.** Identify the need for public investment by assessing:
 1. Current demand (based on statistics provided by service suppliers/ regulators/ ministries / national and County statistical offices for the various types of users);
 2. Future demand (based on reliable demand forecasting models) in both the scenarios with and without the project; and
 3. The factors that constrain demand including government guidelines, technological developments etc.

Section 3: Technical or Engineering Module

A summary of the proposed project solution shall be presented with the following headings

- a) **Location:** provide the geographical coordinates of the location of the project including a graphical illustration (map). Availability of land is a key aspect: evidence should be provided that the land is owned (or can be accessed) by the beneficiary, who has the full title to use it, or has to be purchased (or rented) through an acquisition process. In the latter case, the conditions of acquisition should be described. The administrative process and the availability of the relevant permits to carry out the works should also be explained.
- b) **Technical design:** description of the main works components, technology adopted, design standards and specifications. Key output indicators, defined as the main physical quantities produced (example kilometres of pipeline, number of overpasses, number of trees planted, etc.), should be provided.
- c) **Production plan:** description of the infrastructure capacity and the expected utilization rate. These elements describe the service provision from the supply

side. Project scope and size should be justified in the context of the forecasted demand.

- d) Costs estimates: estimation of the financial needs for project realization and operations. Provide the basis for cost estimates. What financial contingencies are expected?
- e) Implementation timing: a realistic project timetable together with the implementation schedule should be provided including, for example, a Gantt chart (or equivalent) with the works planned. A reasonable degree of detail is needed in order to enable an assessment of the proposed schedule.

Section 4: Environmental and Social Assessment Module

Describe and specify the economic effects of environmental norms and possible compensations for ecological damages. Key questions to address:

- a) What are the likely environmental impacts from undertaking project?
- b) What is the cost of reducing or mitigating the negative impacts?
- c) Evaluation of the environmental impacts and risks with and without the project.
- d) Technical measures are taken to reduce these impacts?
- e) Are there alternative ways of delivering the required service or the good without incurring these environmental costs?
- f) What are the costs of these alternatives?
- g) What is the cost of an environmental impact assessment?
- h) What are the costs of permits and approvals required from environmental protection agencies?
- i) What contractual provisions are needed to reset the project in cases of environmental effects escalating beyond control?
- j) What is the cost of resettlement?
- k) What are the non-market costs and benefits that need to be taken into account in the viability analysis?
- l) How will the project impact Small and Micro Enterprises, local community income, health, land value and social welfare including job creation prospects?

Section 5: Human Resources and Administrative Support Module

Point out the human resource requirements for implementation and operation, in terms of quantities and specialties; identify the sources of the work force. Determine the management capacity and the functional structure of the operating entity. Key issues to be addressed:

- a) What are the managerial and labour needs of the project?
- b) Does organization have the ability to get the managerial skills needed?
- c) What are wage rates for labour skills required?
- d) Are manpower requirements by category reconciled with availabilities and project timing?

Section 6: Institutional and Legal Module

This studies the legal restrictions that may obstruct or impede project implementation or operation. Factors to consider include;

- a) What are the legal or regulatory issues that could be detrimental or assist the project?
- b) Is the entity that is supposed to manage the project properly organized and its management adequately equipped to handle the Project?
- c) Are the capabilities and facilities being properly utilized?
- d) Is there a need for changes in the policy and institutional set up?
- e) Outside this entity, what changes may be needed in policies of the National and County Governments?
- f) What are the legal and regulatory requirements expected before the project is implemented?
- g) What are the risks, legal and regulatory obligations that could increase costs or decrease the benefits?
- h) Does the institution have requisite skills and capacity in line with the project requirements?
- i) Are there suitable incentives or penalties in place to ensure project delivery is on time and within the budget?
- j) Are there critical governance issues that may affect implementation?

Section 7: Financial or Private Analysis.

Describe the financial costs and benefits at market prices and state alternative financial leverage methods;

What is done

- a) Integration of financial and technical variables from demand, technical, and management analysis
- b) Construct cash flow profile of project
- c) Identify key variables for doing economic and social analysis.

Key questions:

- a) What is relative certainty of financial variables?
- b) What are sources and costs of financing?
- c) What are minimum cash flow requirements for each of the stakeholders?
- d) What can be adjusted to satisfy each of the stakeholders?
- e) What is the financial internal rate of return and financial net present value?
- f) What is the probability of getting a negative return?

Section 8: Economic or Social Analysis

Economic adjustments from financial data using conversion factors; after that costs and benefits are appraised from the point of view of the entire economy.

What is done:

- a) Examine the project using the whole country as the accounting entity
- b) Evaluate externalities including environmental.

Key Questions

- a) What is the difference between financial and economic values of variables?
- b) What Causes these differences?
- c) With what degree of certainty do we know the values of these variables?
- d) What is the probability of positive economic feasibility?
- e) What is the expected value of economic net benefits?
- f) What is the economic net present value in (KShs.)?
- g) What is the Economic Internal Rate of return?

Section 9: Distributional Analysis

The project is appraised from the point of view of stakeholders receiving economic benefits or costs. Economic externalities have to be calculated and distributed among different actors (stakeholders)

What is done:

- a) Identification and quantification of extra-economic impacts of project
- b) Distributive Appraisal
- c) Income, Cost, and Fiscal Impacts on various stakeholders
- d) Poverty Alleviation and Political Necessities
- e) Basic Needs: Evaluate the impact of project on achieving basic needs objectives.

Key Questions

- a) In what ways does project generate beneficial and cost impacts on stakeholders?
- b) What stakeholders could the project impact?
- c) Who benefits and who pays the costs?
- d) What are the basic needs of the society that are relevant in the country?
- e) What impact will the project have on basic needs?
- f) What alternative ways are there to generate desirable social impacts?
- g) Is project relatively cost effective in generation of desirable social impacts?

Section 10: Risk (Uncertainty) and Sensitivity Analysis

The flow of costs and benefits throughout the project life is uncertain. Given that uncertainty, consideration has to be given to the costs that those risks imply. The objective of this module is to simulate various scenarios and generate guidance on how to reduce the risk exposure through relevant contractual clauses:

The questions that need to be answered are:

- a) What are the major risks that may affect project?
- b) How will the project be affected if the risk event materializes?
- c) What are the possible mitigation measures needed?
- d) How sensitive are the assumptions used in the financial and economic models in an environment that differs significantly?
- e) What are the political risks involved?

Section 11: Updated Project Costs:

Update the projects costs to reflect the realities of the feasibility study and provide the detailed cost estimates in this section. Provide a detailed cash flow plan per year for the entire life of the project.

Section 12: Annexes

Attach detailed technical and engineering designs, plant prototypes designs etc, financial and economic models and any supporting documents.

FIFTH SCHEDULE
[Regulation 23(2)]
PROJECT COMPLETION REPORT TEMPLATE

Section 1: General Project Information				
a) Basic Data				
Project Name:				
Project Reference Number:	Contract(s):			
Project Threshold:	Sector:			
Commencement date:	Total Project Cost:		Completion Date:	
Financing source	Disbursed amount (Ksh)	Percentage disbursed (%):	Undisbursed amount (Ksh):	Percentage undisbursed (%):
Donor:				
GoK:				
Other				
TOTAL				
b) Background Summary				
Briefly describe or review in summary the objectives, scope, expected outputs, outcomes and goals of the project as per the project concept note.				
c) Post-implementation review by implementation team				
Evaluation reviewed by	Name	Date reviewed	Comments	
Accounting Officer				
Director				
Project Coordinator or Manager				
Section 2: Project Performance Findings				
a) Management effectiveness				
Briefly describe the effectiveness of the project implementation team as objectively as possible				

b) Quality of outputs				
Output indicators (as specified in the PCN)	Achievement (At Completion)	End target (at inception)	Percentage Completion	Remarks (on quality)
Output 1:				
Output 2:				
Output 3:				
c) Cost efficiency				
Planned project cost (Kshs. as per PCN)	Actual project cost (Kshs. at completion)		Percentage of Actual over planned	Remarks
d) Schedule/ Timeliness				
Planned project duration (Months as per PCN)	Actual duration (months from commence to completion)		Percentage of actual over planned duration	Remarks
e) Unplanned or unanticipated side-effects				
Description of unplanned side effects	Type (environmental, social, others)	Positive or Negative	Impact on project (High, Medium, Low)	
f) Residual risks				
Briefly describe any residual risks that can affect the realization of the project objectives in the following format.				
Residual Risk	Likelihood or probability	Impact on the project	Mitigation Measures	
Section 3: Administrative Closure and Accomplishments				
a) Performance metrics				
Briefly describe the performance standards of the completed asset using statistics from final acceptance tests or trials runs at completion.				

b) Completion criteria, customer or end user satisfaction

Briefly describe whether the project completion criteria have been satisfied as follows:

Completion category	Completion Criteria	Customer or end user satisfaction.

Section 4: Pending /Outstanding Issues/Open Issues

Briefly describe the outstanding issues/open issues and actions required addressing them. The actions needed to close the project shall include but not limited to the following:

- a) Closing all open contracts in accordance with their terms and conditions.
- b) Handing over project deliverables to relevant end users.
- c) Handing over project documentations including copyrights, intellectual property, manuals, administrative rights and source codes among others.
- d) Handing over technical designs where applicable.
- c) Payments of contractors, suppliers and consultancies.
- f) Handing over or surrender of remaining financial and non-financial resources.
- g) Communications actions required to be done to project stakeholders on project closure.

Section 5: Lessons Learned and Recommendation

Briefly describe the lessons learnt and recommendations going forward.

SIXTH SCHEDULE

[Regulation 23 (4)]

QUARTERLY/ANNUAL PROJECT PROGRESS REPORT TEMPLATE

Project Code & Title	
Start Date	Project Timelines
End Date	
% of Time Elapsed	
Total Project Cost (a)	Estimated Cost of the Project
Foreign	
Gok	Total Allocations to Date
(b)	Actual cumulative Expenditure (As at 30th June FYN-1)
a-b)	Outstanding Balance as at 30th June FYN-1
Expected Outputs at inception	Actual Physical Progress
Actual achieved Outputs as 30th June FYN-1	
Project Completion Rate as at 30th June FYN-1	
	Approve Budget for the FY N
	Actual Expenditure FY N
	Target Expected outputs for FY N
	Project Completion Rate as at (Date-of-Report)
	Projected Risks
	Challenges/Emerging Issues
	Project Status (ongoing, stalled)
	Recommendations
FY N+1	Projections
FY N+2	
FY N+3	

SEVENTH SCHEDULE (a)
[Regulation 23 (6)]
PROJECT TAX EXEMPTION SCHEDULE (LETTER BASED)
(As per guidelines/Framework circular No. 9 of 2018)

Fields	Description
Project under implementation:	Project Title Financing Agreement/Memorandum of Understanding..... Date signed by The National Treasury..... Project start Date..... Project End Date.....
Project Implementing Agency/MDA Contacts:	Project Implementing Agency..... Implementing agency KRA PIN..... Postal address..... Email address..... Telephone number.....
Project Contractor/Agent Contact:	Contractor name.... Contractor KRA PIN.... Postal address... Email address... Telephone number..... Office location.....
Ministry Responsible:	Responsible Ministry name.... Accounting Officer recommendation..... Designation of recommending officer if not Accounting Officer Reference of Authority letter..... Postal Address..... Email Address... Telephone Number.... Date of recommendation
Funding	Funding Source Name..... Funding type.....(Loan/Grant) Funding Mode.....(Revenue/AIA) Repaying Agency.....

Fields	Description
Project Master list (The National Treasury):	Master list number..... Approval date..... Approving authority..... Commencement date..... Expiry date..... List of goods/Services.....
Consignment:	Name of the consignee..... Consignment number... Port of origin of the goods..... Country of origin of the service providers.... Description of the goods..... Bill of lading/invoice/airway bill..... Value of consignment..... Port of entry..... Supplier's Name..... Confirmation that goods/services in the master list..... (Yes or No) Explanation if consignee is different from contractor/Agent.....
Tax exemptions for imported goods/services:	Import duty..... Exercise duty..... IDF fees VAT..... Warehouse rent penalties..... Railway Development Levy (RDL)..... Others? (specify).....
Tax exemptions for domestic goods/services:	VAT..... Income tax Stamp duty.....
Approval by The National Treasury:	Approved..... (Yes or No) Not Approved comments..... Approving officer..... Designation of approving officer.....

Fields	Description
	Date of approval..... Project duration (years)..... Project end date.....
Execution:	Date forwarded for implementation to KRA.....
	KRA Feedback

SEVENTH SCHEDULE (b)

[Regulation 23(6)]

DOMESTIC

TAX EXEMPTION SCHEDULE (CASE BY CASE)

APPLICATION TO PURCHASE EQUIPMENT/ MATERIALS/MOTOR VEHICLES/GOODS/SERVICES FOR PROJECTS OR PROJECT PERSONNEL ON A DUTY AND VALUE ADDED TAX-CUSTOMS WAREHOUSE RENT AND IDF FREE BASIS

S/No	ITEM DESCRIPTION
1.	DA1(Donor Assistant Form 1) Form Application Number..... Name of the Development Partner Agency..... i. Address..... ii. Date.....
2.	Title of the Project/Agreement/Exchange of notes..... i. Quote the article and session giving exemption..... ii. Date of agreement/Exchange of notes.....
3.	Project Identification Number.....
4.	Project Name.....
5.	Name of Consignee.....
6.	Description of the items being locally purchased.....
7.	Invoice No./Logbook No.....
8.	Name of local Supplier.....
9.	Local Supplier PIN No.....
10.	Full name of the Applicant and Designation.....
11.	Signature.....
12.	Official stamp.....
13.	Implementing Ministry/ Agency..... i. Recommendation..... ii. Full Name..... iii. Designation..... iv. Signature of authorized officer and official stamp..... v. Date.....
The National Treasury	
14.	Resource Mobilization Department

S/No	ITEM DESCRIPTION
	i. Recommendation..... ii. Full Name..... iii. Signature of authorized officer and official stamp..... iv. Date.....
15.	Macro and Fiscal Affairs (Authorization) i. Approved/not Approved..... ii. Full Name..... iii. Designation..... iv. Signature of authorized officer and official stamp..... v. Date.....
Kenya Revenue Authority	
16.	Value Added Tax Department i. VAT free purchase approved..... ii. Full Name..... iii. Designation..... iv. Signature of Authorized Officer..... v. VAT Free Entry No..... vi. Date.....
17.	Customs and Excise Department (Head Office) i. Remarks..... ii. Approved/Not Approved..... iii. Signature of Authorized Officer..... iv. Full Name..... v. Designation..... vi. Date.....
18.	Customs and Excise Department (Port of Entry) i. Signature of the officer releasing goods..... ii. Duty Free Entry No..... iii. Full name..... iv. Designation..... v. Date.....

EIGHTH SCHEDULE

[Regulation 24(2)]

{INSERT IMPLEMENTING AGENCY}

FINAL COMPLETION CERTIFICATE (END OF DEFECTS LIABILITY)

CONTRACT NAME:.....

CONTRACT NO:.....

EMPLOYER {Insert Employer}	ENGINEER {Insert Engineer}	CONTRACTOR {Insert Contractor}
-------------------------------	-------------------------------	--------------------------------

Works Complete:	
Contract Sum:	
Revised Contract Amount:	
Revised Construction Period:	
Commencement Date:	
Completion Date:	
End of Defects Liability Period:	
Date of Final Completion:	

Pursuant to Clause of the Conditions of Contract it is hereby certified that the Contractor has completed the Works detailed above to the satisfaction of the Engineer/Architect. Final Inspection of these works was carried out on(dd/mm/yyyy) by representatives of the Employer, the Engineers/Architect Representative and the Contractors Representatives.

CONTRACTOR	ENGINEER/ARCHITECT*	EMPLOYER
Signed:	Signed:	Signed:
Date:	Date:	Date:
{Insert Name and Address}	{Insert Name and Address}	{Insert Name and Address}

*Note that for Buildings the responsible person is the Architect while for civil works the responsible person is the Engineer.

*Note that for Buildings the responsible person is the Architect while for civil works the responsible person is the Engineer.

NINTH SCHEDULE

[Regulation 33]

1. On the commencement of these Regulations —

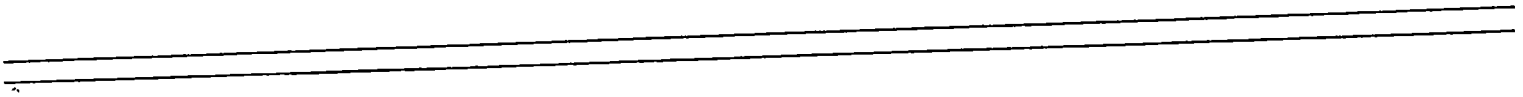
- (a) all new projects to be selected for purposes of funding in the financial year 2023/2024 shall use Public Investment Management Regulations;
 - ~~(b) all accounting officers for National Government and County Governments shall commence the process of ensuring all new projects meet the requirements of these Regulations for purposes of uploading them into the Public Investment Management Information System with effect from the December, 2022;~~
 - (c) all accounting officers for the National Government and County Governments shall ensure any proposed new project earmarked for funding in the financial year 2023/2024 shall be pipelined in the system by the 30th June, 2023;
 - (d) The current electronic Project Monitoring Information Systems (e-ProMIS) and the electronic National Integrated Monitoring and Evaluation System (e-NIMES) shall be collapsed into Public Investment Management Information System.
 - (e) pending the operationalization of the Public Investment Management Information System, the functions of the system as provided for under these Regulations shall continue to be performed by the electronic Project Management Information System (e-ProMIS) under the National Treasury;
 - (f) Pending the operationalization of the Public Investment Management Information System, the accounting officers shall submit the required projects documentation and reports in hard and soft copy to the National Treasury in line with these regulations;
 - (g) all accounting officers for the National Government and County Governments shall be required to prepare a status report of all projects under their mandate which had been started on or before the gazettelement of these regulations, using the format in the Sixth Schedule, based on the following categorization—
 - (i) project size: small, medium, large and mega;
 - (ii) sector basis (example Infrastructure sector, Public Administration Sector, Health Sector among others);
 - (iii) classify the projects within the following categories: new, ongoing, complete and stalled. (for each project indicate the percentage of completion level);
 - (iv) among them, indicate projects financed by development partners, that require counter-part funding;
 - (v) among them, indicate projects, where financing agreements have been signed and implementation of the project has not commenced.
2. Accounting officers shall in line with their budgetary allocations prioritize the projects identified under paragraph (1)(g) in line with Government current development agenda.
 3. On the commencement of these Regulations, the National Treasury, County Treasuries and the accounting officers shall carry out initial capacity building to

all public officers involved in the implementation of these Regulations and this process should be completed on or before the 30th December, 2022.

4. The timelines for implementation of these Regulations shall be as follows-
- (a) the National Government shall be required to have attained full implementation of these Regulations on or before the financial year 2023/2024; and
 - (b) the County Governments shall be required to attained full implementation of these Regulations on or before the financial year 2024/2025.

Made on the 14th March, 2022.

UKUR YATANI, E.G.H,
*Cabinet Secretary for
the National Treasury and Planning.*



EXPLANATORY MEMORANDUM ON THE PUBLISHED PUBLIC FINANCE MANAGEMENT (PUBLIC INVESTMENT MANAGEMENT) REGULATIONS, 2022.

.....

I. The Purpose of Public Investment Management Regulations, 2022

1. The purpose of these regulations is to provide a framework for efficient and effective public investment management that includes project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment to ensure value for money and optimal use of public resources.

2. In particular, the regulations are intended to achieve the following objectives:

a. Provide a standard approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment of viable projects that meet development needs;

b. Establish and maintain a Public Investment Management Information System to inform decision making on Public Investments;

c. Clarify roles and responsibilities of various institutions in the Public Investment Management processes; and

~~d. Enhance transparency, accountability, prudent use of public resources, and public participation.~~

3. The scope of these regulations shall apply to:

a. National and County Governments and their entities, including constitutional commissions, independent offices, and state organs when planning and implementing Public Investments.

b. Public Investment projects whether wholly or partially funded through public finances, irrespective of the source.

c. Projects considered for implementation through Public Private Partnership arrangements, in so far as the regulations are not in contradiction with the provisions of the Public Private Partnership Act, 2013.

d. Security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act, 2015 except where expressly included, or if the Cabinet Secretary so directs,

II. The Legislative Context:

4. Constitution under Article 225 on financial control provides for the establishment and functions of the National Treasury to ensure both expenditure control and transparency in all governments and establish mechanism to ensure their implementation.
5. These provisions of the Constitution are further expounded in section 12 (1)(e) of the Public Finance Management Act, 2012. The Act gives powers to the Cabinet Secretary responsible for matters relating to finance to design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution, provided that the National Treasury shall prescribe regulations that ensure operations of a system respect and promote the distinctiveness of the national and county levels of government;
6. It is in this context that the "***Public Finance Management (Public Investment Management) Regulations, 2022***" are made to establish the Regulations under PFM Act 2012 that provide mechanism and management structure of the Regulations which is clearly linked to national economic development agenda.

7. The regulatory and institutional framework that will be involved in the Public Investment Management Regulatory process are the following:

A. Parliament/County Assembly

~~a. Provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided for by the Public Finance Management Act, 2012;~~

b. Ensure appropriation for public investments are only for Pipeline Projects.

B. The Cabinet/County Executive Committee shall:

a. Provide strategic leadership and interventions in public investment processes;

b. Issue policies required for proper, efficient and effective public investment processes; and

c. Provide necessary approvals, where required.

C. The National Treasury

The National Treasury shall have the following responsibilities for both National and County Governments and their entities:

a. Reviewing the Public Investment Management regulations with the approval of the Cabinet and communicate any changes to Accounting Officers in National and County Governments and their entities;

b. Reviewing the Public Investment Management schedules of these regulations annexed hereto and communicate any changes to Accounting Officers in National and County Governments and their entities;

- c. Overseeing implementation and ensure compliance with these Public Investment Management Regulations;
- d. Formulating, developing and overseeing of public investment management policies;
- e. Designing, developing and maintaining an efficient, effective and reliable Public Investment Management Information System to be used by National and County Governments and their entities;
- f. Administering the Public Investment Management Information System including assigning role-based user and access rights to Accounting Officers and officers designated by them;
- g. Building and strengthening the capacity of National and County Governments and their entities on the use of Public Investment Management processes and systems;
- h. Establishing a Public Investment Management Department, which shall be the focal point for public investment management.
- i. Developing and prescribing criteria for appraisal of project concept notes, pre-feasibility and feasibility studies.
- j. Developing a public investment management information disclosure framework in accordance with the provisions of Access to Information Act.
- k. Ensuring Financing Agreements with development partners are entered into for projects that have been approved and uploaded in the Public Investment Management Information System.
- l. Issuing circulars to National and County government and their entities with respect to implementation of these Regulations.

m. In cases where national government projects are concerned, the National Treasury shall also be responsible for:

i). Developing and maintaining a framework for project planning, conceptual design and implementation;

ii). Reviewing project concept notes for medium, large and mega projects and recommending whether or not ~~pre-feasibility and feasibility studies should be~~ undertaken;

iii). Reviewing feasibility studies and recommending the projects for inclusion in the Project Pipeline;

iv). Monitoring the use of Public Investment Management Information System;

v). Consolidating portfolio of public investment projects in the pipeline, which have been approved by Accounting Officers;

vi). Approving new projects prioritized by Accounting Officer for funding where there is fiscal space;

vii). Reporting on all ongoing projects that do not receive funding in the succeeding year to Cabinet and National Assembly when submitting budget estimates.

viii). Preparing analytical reports based on project data in the Public Investment Management Information System to inform decision making on policy planning and budget execution;

ix). Sharing project analytical reports during the Intergovernmental Budget and Economic Council for coordination;

x). Organizing annual project forums for knowledge sharing.

D. The County Treasury shall:

The County Treasury shall have the following responsibilities:

- a) Establish a Public Investment Management Unit at the County Treasury, which shall be the focal point for public investment management for the County Government;
- b) Review Project Concept Notes for medium, large and mega projects, and recommending whether or not pre-feasibility and feasibility studies should be undertaken;
- c) Build and strengthen the capacity of County Government and its entities on the use of Public Investment Management processes and systems;
- d) Ensure Financing Agreements with development partners are entered into only for projects that have been approved and uploaded in the Public Investment Management Information System.
- e) Reviewing feasibility studies and recommending the projects for inclusion in the Project Pipeline;
- f) Monitor the public investment management information system to ensure that approved and pipelined projects are uploaded;
- g) Reporting on all ongoing projects that do not receive funding in the succeeding year to County Executive Committee and County Assembly when submitting budget estimates.
- h) Consolidate portfolio of public investment projects in the pipeline, which have been approved by Accounting Officers;
- i) Approving new projects prioritized by Accounting Officer for funding where there is fiscal space;

j) Prepare analytical reports based on project data in the Public Investment Management Information System to inform decision making on policy planning and budget execution;

k) Share project analytical reports with the National Treasury during the Intergovernmental Budget and Economic Council for coordination;

l) Organize annual project forums for knowledge sharing.

E. The Department responsible for Planning at the National Government shall:

a) Convene public participation and stakeholder consultation forums in order to identify strategic national and sectoral priorities to be included in national development plans;

b) Coordinate development of national and sectoral development plans;

c) Build the capacity of National and County Governments and their entities on Public Investment Management processes, tools and techniques;

d) issue guidelines to guide the development of National Development Plan, County Integrated Development Plans, Sectoral and Strategic Plans;

e) Develop and maintain a framework for monitoring, evaluation and reporting on non-financial performance of projects which will be automated through the Public Investment Management Information System;

f) Carry out independent mid-term and end term evaluations for medium, large and mega projects on a sample basis in line with schedule 6 of these regulations;

- g) Provide adequate and skilled staff for units responsible for Project Planning and Monitoring in Ministries and State Departments;
- h) Undertake independent ex-post evaluation of projects on sample basis in accordance to schedule 6 of these regulations;
- i) Provide quality assurance on monitoring and evaluation data uploaded in the Public Investment Management Information System;
- j) Prepare quarterly and annual consolidated project monitoring reports and submit to the Cabinet Secretary responsible for Finance to inform policy and decision making.
- k) Prepare project analytic report for informing the public expenditure reviews and annual progress report for decision making.

F. The Department responsible for Planning at the County Government shall:

- a) Convene public participation and stakeholder consultation forums in order to identify county, sectoral and strategic priorities to be included in county integrated development plans;
- b) Coordinate development of county, sectoral and strategic plans;
- c) Build and strengthen the capacity of the County Government and its entities on the use of Public Investment Management processes, tools and techniques;
- d) Provide adequate and skilled staff for units responsible for Project Planning and Monitoring in county governments;

- e) Carry out independent mid-term and end-term evaluations for medium, large and mega projects on a sample basis in line with schedule 6 of these regulations;
- f) Undertake independent ex-post evaluation of projects in line with schedule 6 of these regulations on sample basis;
- g) Provide quality assurance on monitoring and evaluation ~~data uploaded in the Public Investment Management Information System;~~
- h) Prepare quarterly and annual consolidated project monitoring reports and submit to the County Executive Committee Member responsible for Finance to inform policy and decision-making.

G. The Cabinet Secretaries or County Executive Committee Members shall:

- a) Provide strategic leadership and interventions during implementation of public investments;
- b) Provide policies required for proper, efficient and effective implementation of public investments;
- c) Provide necessary approvals, where required.

H. An Accounting Officer shall:

- a) Approve and facilitate resources necessary for effective implementation of projects.
- b) Be accountable for successful implementation of projects based on key performance indicators.
- c) Build and strengthen the capacity of their respective entities on the use of Public Investment Management processes tools and techniques.
- d) Be responsible for efficient and effective utilization of resources that will be expended in project execution.

- e) Monitor, track and report on the financial and non-financial status of projects and programmes;
- f) Be responsible for all procurements to ensure the success of the project on time, on schedule and within budget.
- g) Ensure that project agreements or contracts are consistent with the Financing Agreements for effective and efficient implementation of the project.
- h) Declare all projects within their jurisdiction which are funded by development partners to the National or County Treasury.
- i) Provide the primary link and enhance collaboration between the relevant stakeholders, including Government, development partners, project financiers and coordinate implementation to ensure efficient and effective delivery of the project objectives.
- j) Ensure emerging issues are addressed to attain effective implementation of the project.
- k) Be responsible for monitoring, evaluation and reporting of the project including uploading and updating project monitoring and evaluation data in the system.
- l) Be responsible for successful project closure and transfer of assets and liabilities in accordance with the provisions of the project contract, project document or financing agreement and any other relevant laws.
- m) Update their respective websites with details of approved projects from the pipeline module of the PIMIS.
- n) Be responsible for carrying out end-term project evaluation upon completion of the project.
- o) Ensure that projects emanating from a state or county corporation, or autonomous or semi-autonomous government agency are cleared by the Project Committees, Him or Her, and the Board of the respective corporation or agency and the relevant Cabinet Secretary

- or County Executive Committee Member before submission to the National or County Treasury.
- p) May appoint public officers who are immediately in charge of implementation of a project or program to be the holders of authority to incur expenditure on his or her behalf.
- q) In order to promote information sharing and coordination ~~in public investment projects in accordance with the Inter-~~
~~governmental Relations Act 2012:~~
- i). Participate in Sector Working Groups in both National and County levels
 - ii). Submit a status report to the Intergovernmental Budget and Economic Council for coordination on all ongoing and pipelined projects
 - iii). Constitute joint committees in accordance with Section 23 of the Intergovernmental Relations Act, 2012.
- r) Establish a Project Committee comprising appropriate Officers from the following:
- i). Chairperson – Head of a Directorate or a Department
 - ii). Finance Department - Member
 - iii). A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented – Member. The members shall be appointed from departments within the Ministries Departments and Agencies or other relevant government agencies.
 - iv). One member from any department of the National Government Ministries Departments and Agencies.
 - v). Head of Planning or His or Her representative – Secretariat.

s) County Government: Establish one or a maximum of ten project committees comprising:

- i. Chairperson – Head of a Directorate or a Department
- ii. Finance Department - Member
- iii. A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented – Member. The members shall be appointed from departments within the Ministries Departments and Agencies or other relevant government agencies.
- iv. One member from any department of the County Government Ministries Departments and Agencies.
- v. Head of Planning or His or Her representative – Secretariat.

t) Receive recommendations from the Project Committee and make appropriate decision.

I. The Project Committees shall:

- i. Review project concept notes and make recommendations to the Accounting Officer for decision making within twenty-one days;
- ii. Review project pre-feasibility and feasibility studies and make recommendations to Accounting Officer for decision making;
- iii. Identify the potential project risks and mitigating measures not covered in the Project Concept Note, pre-feasibility or feasibility studies;
- iv. Prioritize projects based on the National Government Ministries Departments and Agencies or County Government Ministries Departments and

- Agencies Strategic Plan, Medium Term Plan, and national and county development plans;
- v. Recommend the mode of project financing;
 - vi. Provide guidance on any changes in the project design;
-

III. Policy Background

8. The policy foundation for establishing Public Investment Management regulations, is the nation's economic development and employment creation well recognized in Kenya's economic blueprint, the Vision 2030, the economic transformative agenda of the Jubilee Government espoused in 3rd MTP of Vision 2030 and the 'Big Four' agenda which feeds into the four broad areas namely:

- i. increasing manufacturing share of Gross Domestic Product from 9.2 percent to 15 percent through promoting businesses and enterprises;
- ii. ensuring food security in the country;
- iii. building one (1) million housing units; and
- iv. ensuring 100% health coverage over the next five years.

9. Public Investment Management regulations will enhance efficiency and effectiveness in the planning and implementation of public investment projects being initiated including the big 4 projects.

IV. Justification

10. Over the recent past, the Government has been increasing public investments at both levels of Governments. Specifically, in the last five Financial Years period, the Government

cumulatively allocated over Kshs. 4.2 Trillion development budget to finance public investments projects across the country.

Development Budgetary allocations for the Past Five Financial Years

1. National Government						
Financial Years	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Budget Kshs (Billion)	718.47	817.29	556.35	625.72	652.35	3,370.18
2. County Government						
Budget Kshs (Billion)	158.62	158.36	139.18	185.76	187.98	829.9
Grand Totals	877.09	975.65	695.53	811.51	840.33	4,200.08

11. While these initiatives have recorded significant socio-economic impact, they have also faced challenges including:

- (i) failure to ensure aggregate public investment spending planned is within realistic resource ceilings and individual public projects are completed within planned budget and schedule;
- (ii) public projects being abandoned due to change of leadership or regime hence delaying the intended benefits to the citizens and residents of this great nation at both levels of Governments;
- (iii) failure for public capital investment projects being procured economically, implemented efficiently and effectively.

- (iv) failure to provide financial resources to operate the public investments as planned to ensure the delivery of the intended services to the public;
- (v) failure to carry-out rigorous project appraisals or evaluate public investments to verify that they represent efficient and effective solutions to identified problems;
- (vi) governance challenges in the management of public investments leading to sub-optimal use of the public resources; and
- (vii) lack of a management information system for recording and tracking progress for these public investment projects.
- (viii) lack of a comprehensive approach to public investment management processes including project identification, planning, appraisal, selection, budgeting, implementation, monitoring and evaluation, reporting, project closure, sustainability and ex-post evaluation.

12. The Memorandum therefore proposes a framework to guide Public Investment Management processes in form of the Public Investment Management Regulations in order to provide a comprehensive approach to project identification, planning, appraisal, selection, budgeting, implementation, monitoring

and evaluation, reporting, project closure, sustainability and ex-post evaluation.

13. The principal objective of the Public Investment Management Regulations is to provide a framework for screening public funded projects before being funded to

ensure quality, effectiveness and efficiency of projects implemented using public resources. This will enhance public investments through implementation of quality and efficient projects, with the highest rates returns on investments.

14. The implementation of the Public Investment Management Regulations will achieve the following outcomes:

- i. provide standards, methodologies and tools to be followed in project appraisal, monitoring, evaluation and closure;
- ii. enhance transparency, accountability, prudent use of public resources and public participation in the determination and monitoring of development budget execution;
- iii. establish and maintain a Public Investment Management Information System which will be a repository of all project information during planning, budgeting, execution, monitoring and evaluation, reporting and project closure and sustainability; and

- iv. Clarify roles and responsibilities of various institutions in the public investment management processes for both levels of Governments.

15. It is under this conviction that the published Public Investment Management Regulations will lead to effectiveness, efficiency and quality projects, through public investments.

V. Public Consultations and Participation

16. In accordance with the Constitution of Kenya and PFM laws, extensive consultations were done while preparing Public Investment Management Regulations with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders consulted are, accounting officers of the Ministries, Departments and Agencies, the Counties, the Council of Governors, the IBEC, the Cabinet and the public in general. Their inputs and comments were received, recorded, analyzed and incorporated in finalizing the Public Investment Management Regulations, 2022.

17. On public participation, it is important to appreciate different stakeholders had different views especially on the mode of implementation of the Public Investment Management Regulations.

VI. Guidance

18. The National Treasury will sensitize stakeholders including Parliament, accounting officers of National and County

Governments and the general public, on Public Investment Management Regulations and processes, the monitoring and evaluation mechanism and the need to ensure regular reporting to the Parliament.

~~VII. Performance Monitoring and Evaluation of the Public Investment Management~~

19. The National Treasury shall monitor the implementation of the Public Investment Management regulations and propose necessary reviews where necessary. In addition, respective accounting officers will carry out regular monitoring and evaluation of implementation of Public Investment Management Regulations.

VIII. Policy Recommendations

20. The Government policy intention as approved by Cabinet is to complete all on-going projects and any new project will require written approval of the Cabinet Secretary / National Treasury & Planning or the Principal Secretary / National Treasury before the new project can be included in the budget of the National Government to be submitted to the National Assembly.

IX. Budgetary Implications

21. The promulgation of the Public Investment Management Regulations will occasion minimal expenditure to operationalize the PIM Regulations and which can be

accommodated within the sector ceilings of the National Treasury and Planning.

X. National Treasury Contact Person.

22. The contact person at the National Treasury is the Cabinet Secretary, Hon. (Amb) Ukur Yatani, EGH or the Principal Secretary, Dr. Julius Muia, CBS

Hon. (Amb) Ukur Yatani, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY & PLANNING

Date.....

