

Approved for tabling

REPUBLIC OF KENYA



14/4/2020
SNA
PARLIAMENT
OF KENYA
LIBRARY

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION

**REPORT ON
THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (COVID-19 EMERGENCY
RESPONSE FUND) REGULATIONS, 2020**

(Legal Notice No. 38 of 2020)

APRIL, 2020

*The Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.*

TABLE OF CONTENTS

ABBREVIATIONS	ii
CHAIRPERSON'S FOREWORD	1
1.0 PREFACE	3
1.1 <i>Establishment and Mandate of the Committee</i>	3
1.2 <i>Committee Membership</i>	4
1.3 <i>Committee Secretariat</i>	6
2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020	7
2.1 <i>Introduction and Background Information</i>	7
2.2 <i>Purpose of the Regulations</i>	7
2.3 <i>Overview of the Regulations</i>	8
3.0 SCRUTINY OF THE INSTRUMENT AND COMMITTEE OBSERVATIONS	9
4.0 COMMITTEE RECOMMENDATION	14
ANNEXURES	15



ABBREVIATIONS

COVID	Corona Virus Disease
PFM	Public Finance Management
LN	Legal Notice
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 vide Legal Notice No. 38 of 2020 dated 30th March, 2020.

The Regulations were submitted to the Clerk of the National Assembly in draft form on 27th March, 2020 for pre-publication consultations and subsequently in published form on 7th April, 2020. They were then tabled before the House on 14th April, 2020.

The Regulations seek to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.

The Fund is a response to the World Health Organization's declaration of COVID-19 as a global pandemic on 11th March, 2020 and His Excellency the President's directive to the National Treasury and other government institutions to contain the spread, effect and impact of COVID-19 pandemic in the country.

The Regulations seek to –

- (i) *establish and specify the sources, object and purpose of the Fund;*
- (ii) *provide for management of the Fund by a Board and an administrator of the Fund;*
- (iii) *provide for a robust governance and accountability framework for the resources received in this Fund; and*
- (iv) *provide for the expenditures of the Fund.*

With the instrument having been submitted to the Clerk of the National Assembly for scrutiny, the Committee commenced its consideration immediately by holding the first sitting on Thursday, 2nd April, 2020.

The Committee examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 and made the following observations –

- i) Statutory Timelines:** The Regulations were published in the Gazette vide Legal Notice No. 38 of 2020 on 26th March, 2020 and submitted to the Clerk of the National Assembly on 7th April, 2020, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013.**
- ii) Consultation / Public participation:** The regulation making authority published the Regulations both on their website and *The Daily Nation* and *The Standard* Newspapers of 31st March, 2020 which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public. The Kenya Law Reform Commission, the Commission for Revenue Allocation and the Institute of Certified Public Accountants of Kenya submitted their memoranda to

the National Treasury and the proposals taken into consideration prior to publication of the Regulations.

- iii) In addition, given the nature and urgency of the COVID-19 pandemic, the Committee pursuant to section 13(q) which provides for the latitude of other considerations, was **satisfied that the advertisement and the input from the institutions listed above serves as proof of sufficient consultation and public participation.**

The Committee also submitted to the National Treasury and Planning various issues of concern in relation to the Fund. The Ministry responded on 7th April, 2020 by providing a schedule of action taken on each of the concerns raised.

Having satisfied itself that the Regulations as published are in accord with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act (No. 18 of 2012) and the Statutory Instruments Act (No 23 of 2013) pursuant to which it is made, the Committee therefore **recommends that the House approves the said statutory instrument in accordance with section 24 (4) of the Public Finance Management Act, 2012.**

In conclusion, 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. I also want to express my heartfelt gratitude to the Members and staff of the Committee on Delegated Legislation for their commitment to duty especially during this difficult period of the COVID-19 pandemic.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 199 and section 24 (4) of the Public Finance Management Act, 2012; it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 (Legal Notice 38 of 2020)**

HON. GLADYS BOSS SHOLLEI CBS MP

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 accordance 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 –

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative

Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, CBS, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Democratic Party

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020

2.1 Introduction and Background Information

5. In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 on 30th March, 2020 vide Legal Notice No. 38 of 2020.
6. The Regulations were submitted to the Clerk of the National Assembly in draft form on 27th March, 2020 and in published form on 7th April, 2020. They were subsequently tabled before the House on 14th April, 2020.

2.2 Purpose of the Regulations

7. The Regulations seek to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.
8. The Fund is a response to the World Health Organization's declaration on 11th March, 2020 of COVID-19 as a global pandemic. Subsequently, His Excellency the President of the Republic of Kenya issued several directives to contain the spread, effect and impact of COVID-19 pandemic in the country. These include:
 - (i) Policy measures and behavioural protocols aimed at containing the spread of COVID-19, such as suspension of learning in all educational institutions, social distancing through minimizing congestion in public transport, shopping malls, entertainment joints and social gatherings;
 - (ii) Self-quarantine or compulsory-quarantine measures taken to ensure the safety of all Kenyans;
 - (iii) Implementation of strict evaluation and monitoring protocol, designed to proactively seek out and test persons who may be carriers of this virus;
 - (iv) Implementation of tax reliefs and other measures aimed at increasing disposable income to the people of Kenya, through:
 - a) 100% tax relief for persons earning gross monthly income of up to Kshs. 24,000;
 - b) Reduction of Income Tax Rate (Pay-As-You-Earn) from 30% to 25%;
 - c) Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;
 - d) Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs); and
 - e) Appropriation of an additional Kshs. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.

9. In recognition of the extra-ordinary nature of the pandemic and its enormous local effects, and conscious of the solemn duty of the Government to guarantee the enjoyment of social, civil and economic rights; the Fund will support the implementation of targeted State interventions to cushion every Kenyan from shocks arising from COVID-19.
10. To achieve this purpose, the Regulations seek to –
- (i) *establish and specify the sources, object and purpose of the Fund;*
 - (ii) *provide for management of the Fund by a Board and an administrator of the Fund;*
 - (iii) *provide for a robust governance and accountability framework for the resources received in this Fund;*
 - (iv) *provide for the expenditures of the Fund; and*
 - (v) *provide for Presidential Declaration that COVID-19 is no longer a threat to socio-economic and political stability in Kenya and consequently trigger the lapsing of the Fund and its subsequent winding up.*

2.3 Overview of the Regulations

11. **PART I** of the Regulations provide for the citation and definitions of terms used in the Regulations including the definition of “COVID-19” to mean an infectious disease caused by corona virus.
12. **PART II** of the Regulations provides for establishment of the Fund as an Emergency Response Fund. It further provides for the Objects of the Fund to include, among other purposes –
- (i) Purchase of essential supplies for public hospitals: This should include any other place designated for COVID-19 interventions including any centre, hotels, schools etc.
 - (ii) Regulation 2(b) provides that the Fund is for programmes emergency relief for the older and poor persons in urban informal settlements- This should also include Rural populations lest it becomes discriminative and infringes on Article 27(4) of the Constitution and section 13 (a) of the Statutory Instruments Act.
 - (iii) It also provides for the sources of the Fund to include appropriations by the National Assembly, voluntary contributions, grants, donations, bequests, gifts.

Voluntary contributions include contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.
 - (iv) The Part provides generally for uses or expenditure of the Fund being for all payments in respect of any expenses incurred to achieve the objects of the Fund.
13. **PART III** deals with management of the Fund and establishes a Board of Management comprising twelve persons (12) including the Chairperson and Secretary to the Board.

14. Regulation 8 enumerates the functions of the Fund and Regulation 9 provides for the Administrator of the Fund, the functions of the administrator, the mechanisms of accounting for the fund, approvals and the designation of treasury staff (officers) as the secretariat of the Fund.
15. **PART IV** deals with Financial Provisions including authority to the Administrator to open bank accounts, restriction from overdrawing from the accounts and uses of withdrawals. Conformity to procurement regulations, preparation of quarterly financial and non-financial reports {To whom should the reports be submitted and by when}
16. It also provides for accounts including keeping of proper books and records and preparation of Financial statements.
17. **PART V** deals with the General Provisions including the Presidential declaration on the lapse of the Fund and the procedure for winding up of the Fund upon such a declaration.

3.0 SCRUTINY OF THE INSTRUMENT AND COMMITTEE OBSERVATIONS

18. With the instrument having been submitted to the Clerk of the National Assembly for scrutiny, the Committee commenced its consideration immediately by holding the first sitting on Thursday, 2nd April, 2020.
19. The Committee examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 and made the following observations –

i) **Statutory Timelines:** The Regulations were published in the Gazette vide Legal Notice No. 38 of 2020 on 26th March, 2020 and submitted to the Clerk of the National Assembly on 7th April, 2020, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013.**

ii) **Consultation / Public participation:** The regulation making authority published the Regulations both on their website and *The Daily Nation* and *The Standard* Newspapers of 31st March, 2020 which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public. The Kenya Law Reform Commission, the Commission for Revenue Allocation and the Institute of Certified Public Accountants of Kenya submitted their memoranda to the National Treasury and the proposals taken into consideration prior to publication of the Regulations.

Given the nature and urgency of the COVID-19 pandemic, the Committee, pursuant to section 13(q) which provides for the latitude of other considerations, was **satisfied that the advertisement and the input from the institutions listed above serves as proof of sufficient consultation and public participation.**

iii) **Regulatory Impact Statement:** The Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are made pursuant to section 24 of Public Finance Management Act which permits

the Cabinet Secretary to establish a national government public Fund with the approval of the National Assembly.

- iv) **Treasury Response to the issues raised by the Committee:** The following is a summary of the issues the Committee raised in respect to the Regulations and the response by the National Treasury dated 7th April, 2020.

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”	Accepted.
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” “to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability (PWDs), widows and widowers.</p>	<p><i>Accepted with amendments.</i></p> <p>The definition of essential supplies includes quarantine facilities and the term used is “<i>includes</i>”, which means foresees other areas which can be covered including isolation centres.</p> <p><i>Accepted.</i> The definition of the World Health Organisation is agreed upon with Ministry of Health.</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			<i>Accepted with amendments.</i> The definition of vulnerable persons includes persons without a clear means of livelihood. The National Treasury understanding is that not all widows and widowers are vulnerable and some of them have clear means of livelihood such as rental income, employment and business income.
3.	Regulation 4(2)(a)	The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.	<i>Not accepted.</i> Public hospitals include dispensaries, health centres, level 4, 5, and 6 hospitals and therefore any other hospital which will be designated by the government to receive COVID-19 patients and upon designation, such private hospitals shall be construed to be public institutions. The paragraph also refers to related institutions, hence broad enough to cover private health facilities handling COVID-19 cases.
4.	Regulation 4(2)(b)	Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... older and poor persons in urban informal setting. This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory	<i>Accepted with amendments.</i> All persons without clear means of livelihood including senior citizens and poor citizens are catered for. All informal settlements are for both big and small towns, who have been rendered vulnerable by COVID-19

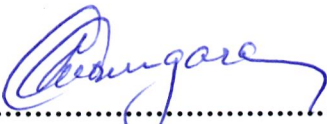
	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.	<p>pandemic and have no clear means of livelihood.</p> <p>Paragraph (f) provides for emerging issues which is broad enough.</p> <p>In addition, the Social Assistance fund will complement the COVID-19 Emergency Response Fund Regulations, 2020 to cushion other Kenyans who are also vulnerable.</p>
5.	Regulation 5	Regulation 5(b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.	<i>Accepted.</i> The word ‘private persons’ includes an individual or legal persons and therefore is catered for.
6.	Regulation 7	The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.	<i>Accepted with amendments.</i> The composition of the Board shall take into account gender balance. However, the Cabinet Secretary for Health is the Chairperson of the Cabinet Sub-Committee on health matters, which will be expected to justify the resource requirements of the health sector to the Board and therefore including him/her in the Board will lead to conflict of interest.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both	<i>Accepted.</i> All financial statements will be transmitted to the National Assembly after

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		Auditor General and the National Assembly.	audit by the Auditor General. This is provided for in Regulation 13.
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the monthly returns to the National Assembly for purposes of accountability.</p>	<p>The quarterly financial and non-financial reports are submitted to the National Treasury, Controller of Budget and Commission on Revenue Allocation in accordance with the provisions of the Public Finance Management Act, 2012 and its Regulations thereof.</p> <p><i>Accepted with amendments.</i></p> <p>Management reports are ordinarily not regulated such as monthly management reports. However, the National Assembly can request for any report and such report shall be submitted to the National Assembly within 14 days.</p> <p>In addition, all revenues received in the Fund shall on monthly basis be gazetted by the 21st day of the succeeding month. This is provided for under section 46 (2) of the PFM Act, 2012. This is already provided for in Reg. 13.</p>
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a	<i>Accepted.</i> The PFM Act, 2012 provides the manner in which all national

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.	public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act and clearly states that the surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly.

4.0 COMMITTEE RECOMMENDATION

20. Having examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 (*Legal Notice No. 38 of 2020*), against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act, (No. 18 of 2012) and the Statutory Instruments Act, 2013 (No. 23 of 2013), **the Committee recommends that the House approves the said statutory instrument in accordance with section 24(4) of the Public Finance Management Act, 2012.**

Signed.....
for 
HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date..... *14. 4. 2020*

ANNEXURES

- 1. Adoption List**
- 2. Paper Laid: Legal Notice No. 38 of 2020 and Explanatory Memorandum**
- 3. Newspaper advertisement dated 31st March, 2020**
- 4. Committee Minutes**


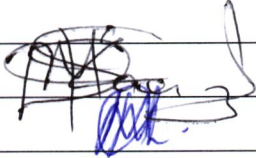


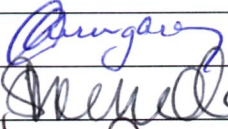
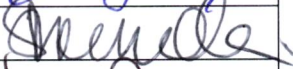
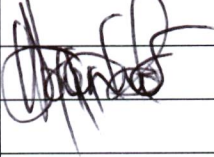
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION SCHEDULE

Report on the Consideration of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020

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

DATE: 14 April 2020

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



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance-Nairobi
Fax No.: 310833
Telephone: 2252299
When Replying Please Quote;

THE NATIONAL TREASURY
P.O. Box 30007
NAIROBI

REF. No. TNT/CONF 158/01/C/14

6th April, 2020

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI.

DfSP - for tabling

Plans - for information of the Committee

Dear *Sialai,*

RE: THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020
LEGAL NOTICE NO. 38

CMA

7/21/20

The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 have been published vide Legal Notice No. 38.

Towards this end, the National Treasury is submitting the following documents in accordance with the Statutory Instruments Act, 2013 to the National Assembly for further necessary action:-

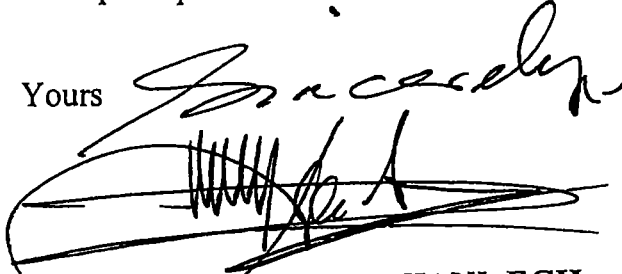
- a. The published Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 Legal Notice No. 38;
- b. A signed Explanatory Memorandum;
- c. The evidence of public participation while developing the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 and the public notice inviting the general public to submit comments; and
- d. A Matrix on all comments/inputs received from the National Assembly's Committee on Delegated Legislation and general public and the rationale for each.

01 APR 2020

The purpose of this letter, therefore, is to submit the above-mentioned documents to the National Assembly for your further necessary action.

Your prompt attention and action on this matter will be highly appreciated.

Yours



HON. (AMB) UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to: Hon. Paul Kihara Kariuki, CBS, SS
Attorney General
State Law Office & Department of Justice
Sheria House
NAIROBI

Julius Muia, PhD, CBS
Principal Secretary
National Treasury
National Treasury & Planning
NAIROBI

Kennedy Ogetto, EBS
Solicitor General
Office of the Attorney General
Sheria House
NAIROBI

SPECIAL ISSUE

Kenya Gazette Supplement No. 31A

525

27th March, 2020

(Legislative Supplement No. 19A)

LEGAL NOTICE NO. 38

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

**THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

Arrangement of Regulations

Clause

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—ESTABLISHMENT OF THE FUND

3—Establishment of the COVID-19 Emergency Response Fund.

4—Object and Purpose of the Fund.

5—Sources of the Fund.

6—Expenditure of the Fund.

PART III—MANAGEMENT OF THE FUND

7—Board of the Fund.

8—Functions of the Board.

9—Administrator of the Fund.

PART IV—FINANCIAL PROVISIONS OF THE FUND

10—Bank Accounts of the Fund.

11—Overdrawn account.

12—Withdrawals from the Fund.

13—Financial and Procurement Regulations.

14—Quarterly Reports.

15—Accounts of the Fund.

PART V—GENERAL PROVISIONS

16—Presidential Declaration and Lapse of the Fund.

17—Winding up of the Fund.

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020

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

THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020	
PART I—PRELIMINARY	
1. These Regulations may be cited as the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.	Citation.
2. In these Regulations, unless the context otherwise requires—	Interpretation.
“Act” means the Public Finance Management Act, 2012	
“Administrator of the Fund” means a person designated as such under Regulation 9 of these Regulations;	
“Board” means the COVID-19 Emergency Response Fund Board established under Regulation 7 of these Regulations;	
“Cabinet Secretary” has the meaning assigned to it under Section 2 of the Act;	
“COVID-19” means an infectious disease caused by coronavirus;	
“essential supplies” includes human medicine, medical equipment, medical consumables, medical protective gear, quarantine facilities, COVID-19 test kits, food, logistics, water, electricity and medical disposal bins;	
“frontline workers” includes immigration officers, customs officers, security officers, community health assistants and volunteers;	
“Fund” means the COVID-19 Emergency Response Fund established under Regulation 3 of these Regulations;	
“voluntary contributions” includes voluntary pay cuts, voluntary salary contributions, subscriptions, donations and gifts; and	
“vulnerable persons” includes persons with special needs such as older persons, pregnant women, orphans, vulnerable child and persons without a clear means of livelihood.	
PART II—ESTABLISHMENT OF THE FUND	
3. There is established a Fund to be known as the COVID-19 Emergency Response Fund.	Establishment of the Fund.
4. (1) The object and purpose of the Fund shall be to mobilize resources for emergency response towards containing the spread,	Object and purpose of the

effect and impact of COVID-19 pandemic.	Fund.
(2) Notwithstanding the generality of sub regulation (1) the purpose of the Fund shall include the following—	
(a) to fund the purchase of essential supplies for public hospitals and other related institutions, health professionals and frontline workers, as need arises;	
(b) to fund programmes and initiatives towards cushioning and provision of emergency relief to the most vulnerable, older and poor persons in urban informal settlements;	
(c) to support and stimulate micro, small and medium enterprises rendered vulnerable by COVID-19 pandemic;	
(d) to fund restoration of the facilities being used for compulsory quarantine for safe use by the hosting institutions;	
(e) to enhance the capacity of the relevant research institutions in handling COVID-19 surveillance; and	
(f) to fund any other emerging issue arising from the COVID-19 pandemic.	
5. The Fund shall consist of—	Sources of the Fund.
(a) monies appropriated by National Assembly for purposes of the Fund;	
(b) voluntary contributions from public officers and private persons;	
(c) grants, donations, subscriptions, bequests or other gifts made to the Fund; and	
(d) monies from any other source approved by the Cabinet Secretary.	
6. There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established.	Expenditure of the Fund.
PART III—MANAGEMENT OF THE FUND	
7. (1) There is hereby established a board to be known as COVID-19 Emergency Response Fund Board which shall comprise of—	Board of the Fund.
(a) a Chairperson appointed by the President;	
(b) Cabinet Secretary responsible for matters relating to Interior and Co-ordination of National Government;	
(c) Chairperson of the Council of County Governors; and	
(d) Eight other members, who shall not be public officers, appointed by the President.	
(2) There shall be a Secretary to the Board appointed by the President and whose duties shall be specified in the appointing instrument.	
8. The functions of the Board shall be—	Functions of the

	Board
(a) to consider and recommend the estimates of revenue to and expenditure from the Fund to the Cabinet Secretary for approval;	
(b) to approve the opening and closing of bank accounts in accordance with the Act;	
(c) to approve disbursements from the Fund;	
(d) to receive, review and approve reports on the performance of the Fund;	
(e) to oversee the monitoring and evaluation of the programmes and activities under the Fund;	
(f) to approve the financial statements of the Fund prepared in accordance with the Act;	
(g) to consult with the Cabinet Secretary on matters relating to the administration of the Fund; and	
(h) to perform any other functions that shall be assigned by the Cabinet Secretary.	
9. (1) The Administrator of the Fund shall be the Principal Secretary for the time being responsible for matters relating to finance.	Administrator of the Fund.
(2) The Administrator of the Fund shall exercise the following functions—	
(a) supervise and control the administration of the Fund;	
(b) prepare estimates of annual revenue and expenditure of the Fund relating to its obligations and operational expenses and submit it to the Board for adoption;	
(c) cause to be established proper systems of control and oversight under the provisions of the Act;	
(d) advise and consult the Board on matters relating to the administration of the Fund;	
(e) prepare non-financial performance reports of the Fund and submit them to the Board for adoption;	
(f) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;	
(g) prepare, sign and transmit to the Auditor-General financial statements in accordance with the Act; and	
(h) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.	
(3) Upon approval by the Board, the Administrator of the Fund shall submit estimates of revenue and expenditure to the Cabinet Secretary for approval.	
(4) The Administrator of the Fund shall designate officers under the National Treasury as the secretariat to the Fund.	
PART IV—FINANCIAL PROVISIONS	

10. (1) The Administrator of the Fund may open bank accounts with the approval of the Board in the name of the Fund with a bank as may be approved by the National Treasury.	Bank accounts for the Fund.
(2) All moneys payable into the Fund shall be received into the bank accounts of the Fund.	
11. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.	Overdrawn accounts.
12. (1) Withdrawals from the Fund shall only be for purposes of promoting the objects and purpose for which the Fund is established.	Withdrawals from the Fund.
(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.	
13. The Fund shall be governed in accordance with the financial and procurement laws and Regulations as applicable.	Financial and procurement Regulations.
14. The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the Act.	Quarterly reports.
15. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.	Accounts of the Fund.
(2) The Administrator of the Fund shall prepare financial statements of the Fund in accordance with the Act.	
PART V—GENERAL PROVISIONS	
16. (1) The President may, in consultation with the Cabinet Secretary responsible for matters relating to health, and by Notice in the Gazette, declare that COVID-19 pandemic is no longer a threat to the social, economic and political stability of the country.	Presidential declaration and lapse of Fund.
(2) Upon such declaration as provided for under paragraph (1), the Fund shall lapse.	
17. Upon the lapsing of the Fund in the manner provided for under regulation 16, the Fund shall be wound up in accordance with the provisions of the Act and Regulations made thereunder.	Winding up of the Fund.

Dated the 27th March, 2020.

UKUR YATANI,

Cabinet Secretary for the National Treasury and Planning.

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020

.....

I. The Purpose of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

1. These Regulations propose to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.
2. The World Health Organization (WHO) on 11th March, 2020 declared COVID-19 a pandemic, pointing to the over 300,000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
3. Subsequently, His Excellency the President of the Republic of Kenya has issued several directives to contain the spread, effect and impact of COVID-19 pandemic in the country. These include:
 - a. Policy measures and behavioural protocols aimed at containing the spread of COVID-19, such as suspension of learning in all educational institutions, social distancing through minimizing congestion in public transport, shopping malls, entertainment joints and social gatherings;
 - b. Self-quarantine or compulsory-quarantine measures taken to ensure the safety of all Kenyans;
 - c. Implementation of strict evaluation and monitoring protocol, designed to proactively seek out and test persons who may be carriers of this virus;
 - d. Implementation of tax reliefs and other measures aimed at increasing disposable income to the people of Kenya, through:
 - i. 100 % Tax Relief for persons earning gross monthly income of up to Ksh. 24,000,
 - ii. Reduction of Income Tax Rate (Pay As - You - Earn) from 30% to 25%,
 - iii. Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;

- iv. Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs); and
 - v. Appropriation of an additional Ksh. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.
- e. In recognition of the extra-ordinary nature of this global tragedy and its enormous local effects, and conscious of the solemn duty of the Government to guarantee the enjoyment of social, civil and economic rights; this Fund will support the implementation of targeted state interventions to cushion every Kenyan from shocks arising from COVID-19.
4. To achieve this purpose, the Regulations in particular:
- a. establish and specify the sources, object and purpose of the Fund;
 - b. provide for management of the Fund, by a Board and an administrator of the Fund;
 - c. provide for a robust governance and accountability framework for the resources received in this Fund;
 - d. provide for the expenditures of the Fund; and
 - e. provide for Presidential Declaration that COVID -19 is no longer a threat to socio-economic and political stability of this great national and consequently trigger the lapsing of the Fund and its subsequent winding up.

II. The Legislative Context:

5. The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012. Towards this end, this Fund is proposed to be established under the section.
6. Taking into account the extra-ordinary nature of this global tragedy and its enormous local effects, including the directives on social distancing, the National Treasury has not subjected these Regulations to public consultations, as required under the Statutory Instruments Act, 2013.

III. Policy Background

7. COVID-19 is an infectious disease caused by coronavirus, which is highly contagious and it's mainly spread from person-to-person.
8. On 11th March, 2020, WHO declared COVID-19 a pandemic, pointing to the over 300, 000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
9. Consequently, the Government of Kenya has put in place a raft of policy measures, behavioural protocols and economic reliefs aimed at containing the spread of COVID-19.

IV. Public Consultations

10. The National Treasury published the Regulations both on its website, the Daily Nation and the Standard Newspapers of 31st March, 2020, which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5.00 pm for submission of comments / views and memoranda from stakeholders and the general public. A report from the comments received from the public including the comments from the National Assembly's Committee on Delegated Legislation, on the Regulations and action taken by the National Treasury is attached as an Appendix to this Explanatory Memorandum.

V. Guidance

11. The National Treasury and the Ministries of Interior and Coordination of National Government; Health; Agriculture, Livestock, Fisheries and Co-operatives; Industry and Trade will sensitize stakeholders including Parliament, and the general public, on the provisions of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

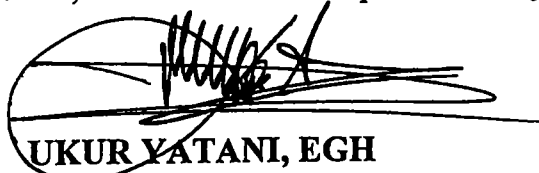
VI. Performance Monitoring and Evaluation of the Fund

12. The National Treasury shall monitor the application of the COVID-19 Emergency Response Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, COVID-19 Emergency Response Fund Board shall be responsible for implementing the Fund and will also carry out regular monitoring and

evaluation of the specific programmes, projects and develop policies relating to the general administration and management of the Fund.

VII. National Treasury Contact Person.

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



UKUR YATANI, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY AND
PLANNING

Date.....7th April, 2020.....



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

Telegraphic Address: 22921
Finance – Nairobi
- 00100 FAX NO. 310833
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007
NAIROBI

When Replying Please Quote

**COMMENTS BY THE COMMITTEE ON DELEGATED LEGISLATION (NA),
COMMISSION ON REVENUE ALLOCATION, KENYA LAW REFORM
COMMISSION AND THE INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS OF KENYA ON THE PUBLIC FINANCE MANAGEMENT
(COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”	<i>Accepted.</i>
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The</p>	<p><i>Accepted with amendments.</i> The definition of essential supplies includes quarantine facilities and the term used is “<i>includes</i>”, which means it foresees other areas which can be covered including isolation centers.</p> <p><i>Accepted.</i> The Definition is the World Health Organization definition, which is common and agreed with the Ministry of Health.</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>Ministry may consider consulting health experts to properly define "COVID19" since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of "vulnerable persons" should include persons with disability(PWDs), widows and widowers.</p>	<p><i>Accepted with amendments.</i> The definition of vulnerable persons includes persons without a clear means of livelihood. The National Treasury understanding is that not all widows and widowers are vulnerable and some of them have clear means of livelihood such as rental income, employment income and business income.</p>
3.	Regulation 4(2)(a)	<p>The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.</p>	<p><i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions.</p> <p>The paragraph also refers to related institutions, hence broad enough to cover private health facilities handling COVID-19 cases.</p>
4.	Regulation 4(2)(b)	<p>Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... older and poor persons in urban informal</p>	<p><i>Accepted with amendments.</i> All persons without clear means of livelihood including senior citizens and poor persons are catered for. All</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>setting. This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.</p>	<p>informal settlements are catered for both big and small towns, who have been rendered vulnerable by COVID-19 pandemic and have no clear means of livelihood.</p> <p>Para. (f) provides for emerging issues which is broad enough.</p> <p>In addition, the Social Assistance Fund will complement the COVID-19 Emergency Respond Fund Regulations, 2020 to cushion other Kenyans who are also vulnerable.</p>
5.	Regulation 5	<p>Regulation 5 (b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.</p>	<p><i>Accepted.</i> The word “private persons” includes a natural persons or legal persons and therefore this is catered.</p>
6.	Regulation 7	<p>The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.</p>	<p><i>Accepted with amendments.</i> The composition of the Board shall take into account the gender balance. However, the Cabinet Secretary / Health is the Chairperson of the Cabinet Sub-Committee on Health matters, which will be expected to justify the resource requirements of the Health Sector to the Board and therefore including him /</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			her in the Board will lead to a conflict of interest.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.	<i>Accepted.</i> All financial statements will be transmitted to the National Assembly after audit by the Auditor General. This is already provided for in Reg. 13
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the monthly returns to the National Assembly for purposes of accountability.</p>	<p>The quarterly financial and non-financial reports are submitted to the National Treasury, Controller of Budget and Commission on Revenue Allocation in accordance with the provisions of the Public Finance Management Act, 2012 and its Regulations thereof.</p> <p><i>Accepted with amendments.</i> Management reports are ordinarily not regulated such as monthly management reports. However, the National Assembly can request for any report and such report shall be submitted to the National Assembly, within fourteen days.</p> <p>In addition, all revenues received in this Fund shall on monthly basis be gazetted on or by the 21st Day of the succeeding month. This is</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			provided for under Section 46 (2) of the Public Finance Management Act, 2012. This is already provided for in Reg. 13
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.	Accepted. The Public Finance Management Act, 2012 provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly.
COMMENTS / INPUTS FROM KENYA LAW REFORM COMMISSION			
10.	Regulation 2	In the definition of “essential supplies “ to include soap and alcohol based sanitizers and any other item that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more items than what is listed.
11.	Regulation 2	In the definition of “frontline workers” to include airline crew, airport personnel and any other category of workers that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more categories than what is listed.

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
12.	Regulation 2	Clarify the definition of vulnerable persons.	Accepted. In the definition of " <i>vulnerable persons</i> ", the key word is " <i>includes</i> " meaning the list is not exhaustive and therefore it will include street children and families as long as they have no clear means of livelihood. As suggested above.
13.	Application	Include a paragraph to the effect that the Regulations shall cover prevention and treatment measures in all parts of the Republic	Not accepted. All parts of Kenya include private residencies where citizens have been directed to self-quarantine and therefore litigious Kenyans can later after COVID-19 sue the Government that their costs should have been catered for while under quarantine. Already the quarantined Kenyans have started demanding that the Government should pay on their behalf. The general objective is clear.
14.	Regulation 7 (2)	Amend the Regulation to provide that Secretary will be an <i>Ex-Official Board Member</i>	Not accepted. The Secretary for this Board, will be equivalent to a Corporation Secretary, who will not be an ex-official Member of the Board.
15.	Regulation 14	Amend to include ad-hoc reports as may be required from time to time.	Accepted. The National Assembly or the Board have the powers under the law to request for an ad-hoc report and such report shall be prepared and submitted within fourteen days. Therefore, we

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			do not need to legislate what is already legislated. This is already provided for in Reg. 13.
16.		Provide for powers for the Cabinet Secretary to exempt a tax obligation on a tax payer who make donations to the Fund or provides other services promoting the objective of the Fund.	Not accepted. Subsidiary legislation cannot amend a principal law. This is a subsidiary legislation and there are principal laws dealing with tax exemption matters such as Income Tax, VAT Act, among others and therefore this proposal should be channeled towards the specific law and not a subsidiary legislation.
17.		Consider making a provision for the Board to co-opt experts in the Board.	Not accepted. The Cabinet has set up technical sub-committees which will deal with the technical issues, whereas the Board will deal with the mobilization of resources and allocation of the same based on the submitted technical needs. Towards this end, the experts are required at the technical level and not the Board level.
18.		Consider a provision for reimbursement of Board expenses.	Not Accepted. The Board members are eminent persons who will provide pro-bono services as part of their corporate social responsibility to the nation during COVID-19 pandemic.
19.	Regulation 17	Provide specifically for the winding up process of the Fund.	Accepted with amendments. The Public Finance Management Act, 2012

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			<p>provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly. Reg. 17 is clear on the process.</p>
COMMENTS / INPUTS FROM COMMISSION ON REVENUE ALLOCATION			
20.	Regulation 2	<p>Definition of the word “<i>vulnerable persons</i>” which includes “<i>persons without a clear means of livelihood</i>” is very subjective and needs clarity.</p>	<p>Not accepted. In the definition of “<i>vulnerable persons</i>”, the key word is “includes” meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization.</p>
21.	Regulation 4 (b)	<p>Is specific on provision of emergency relief to poor persons in urban informal settlements to the exclusion of the rural poor who should also be catered for by the Fund.</p>	<p>Not accepted. The rural poor are taken care of by the Social Assistance Fund. In addition, in emergency relief to poor persons in urban informal settlements are made to address the effect of the urban poor who will be rendered non-productive due to COVID-19 Pandemic as a result of lock-down and these</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			will be required to stay in-doors for the period of the lock-down.
22.		Board allowances and expenses	<i>Not Accepted.</i> This Board will not receive any Board allowances and their services will be pro-bono as their contribution to the society. This is a corporate social responsibility by the Board.
COMMENTS / INPUTS FROM INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)			
23.	Regulation 2	Definition of “vulnerable persons” leaves out an important group i.e. street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood.	<i>Not accepted.</i> In the definition of “vulnerable persons”, the key word is “includes” meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization including the street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood .
24.	Regulation 4	To include any other duly registered / licensed health facility that is in the view of the Board is offering relief for patients immediately after public hospitals. Amend sub-regulation (b) to include ...women, older members of society, persons with disabilities, children, youth, members of minority or	<i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions. The paragraph also refers to related institutions, hence broad

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		marginalized communities.	enough to cover private health facilities handling COVID-19 cases.
25.	Regulation 5	<p>Expand the sources of monies to the Fund to include:-</p> <p>a. Monies unutilized from unclaimed asset Funds;</p> <p>b. Forfeiture of seized cash and cash equivalents from proceeds of crime including proceeds of drug trafficking and anti-money laundering activities;</p> <p>c. All proceeds recovered from graft and corruption cases;</p> <p>d. Fines and sanctions imposed under the Public Health Act and Environmental Management and Coordination Act.</p>	<p>Not Accepted. The applications of the identified sources of revenues by the Institute are guided by the specific statutes, which have stated where the revenues shall be directed to. For example, the proceeds of Crime and Anti-Money Laundering Act states that all proceeds of crime should be remitted to the Consolidated Fund. Towards this end, a subsidiary legislation cannot amend a principal law to direct the revenues elsewhere.</p>
26.	New Regulation	<p>The new Regulation to state as follows:-</p> <p>“At least 40% from the National Government Contingency Fund and at least 25% from each County Emergency Fund as stipulated under Section 110 of the Public Finance Management Act, 2012 shall be consolidated and re-allocated to COVID-19 Emergency Response Fund.</p>	<p>Not Accepted. The Public Finance Management Act, 2012 has clear provisions on how the Contingency Fund and County Emergency Funds shall be accessed and utilized. Therefore this proposed amendment is not made for posterity and therefore is not supported by the National Treasury. In addition, the a subsidiary legislation cannot amend an Act of Parliament, which directs how the Contingency Fund and County Emergency Fund shall</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			be utilized.
27.	Regulation 6	To add a definition on the “unauthorized expenditure”	<i>Accepted with amendments.</i> The Public Finance Management Act, 2012 which is the principal law, and therefore these Regulations are being made under the Public Finance Management Act, 2012 and therefore the definition will also apply for these Regulations. In addition, this will be a repetition.
28.	Regulation 7 (2)	<p>To add “subject to the general supervision and direction of the Fund Administrator, the Secretary shall be the Chief Executive Officer responsible for the management of the operation of the Fund, management of funds, property and business of the Board; and Fundraising.</p> <p>Proposes to provide for the qualification of the Chairperson and Board members to be a citizen of Kenya, knowledge or experience in disaster management of not less than 15 and 10 years for Chairperson and Members respectively and inclusion of the Cabinet Secretary / Health and an expert in infectious diseases in the Board.</p> <p>Proposes that the Regulations provide for remuneration of the Board members.</p>	<p><i>Not accepted.</i> The roles of the Secretary and the Fund Administrator are totally different and therefore the Secretary should not be subjected to the Administrator.</p> <p><i>Not Accepted.</i> The Board will be supported by competent technical secretariat. This is in addition to the PFM roles including fund-raising.</p> <p><i>Not Accepted.</i> The Board shall not be remunerated and therefore there is no need to provide for the remuneration of Board.</p> <p><i>Accepted.</i> The tenure of the Board shall lapse with the</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		The tenure of the Board to be made clear that the Board will cease to be in place upon the lapse of the Fund, as guided by Regulation 16.	Fund. Therefore this is already provided for in the Regulations.
29.	Regulation	<p>The Institute proposes either of the following options:-</p> <p>a. Expand the mandate of the Secretary to the Board to include responsibilities of the Administrator of the Fund and include designated staff of the National Treasury to support as Secretariat to the Board. In essence, delete Regulation 9 and take those functions to the Secretary.</p> <p>Or</p> <p>b. include the Principal Secretary (Administrator of the Fund) among members of the Board.</p>	<p>Not accepted. The Role of the Administrator of a National Public Fund is a public finance management role, assigned by the Constitution as the Accounting Officer under Article 226 (2) of the Constitution. An Accounting Officer is accountable to the National Assembly for application of public resources. The Role of a Secretary of a Board is administrative and can be assigned to any public officer. A Secretary of a Board is accountable to the Board for proper functioning of the Board.</p> <p>Towards this end, these are distinct roles, which cannot be merged due to their levels of accountability.</p>
30.	Regulation 14.	The Institute proposes that "quarterly reports be published and publicized"	<i>Accepted.</i> The provisions of the Public Finance Management Act, 2012 are very clear that any report prepared under Public Finance Management Act, 2012 which includes quarterly financial and non-financial reports shall be published and publicized. This is provided for under Section 2 of the Public

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			Finance Management Act, 2012. Once reports are published and publicized, they are public documents and any person / institution which requires a copy they can download it from the National Treasury at any time of their choice.
31.	New proposal	The institute proposes an Administration cost of up to 5%	<i>Not Accepted.</i> The Fund shall have no administration costs and therefore all the funds shall be applied towards COVID-19 Pandemic. Each implementing government institution shall apply their own resources allocated by National Assembly to deal with any administration costs. In addition, the Board shall not draw any remuneration.

MINUTES OF THE 12TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 2ND APRIL, 2020 AT 11.30 A.M. IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Fatuma Gedi, CBS, MP** - **Vice Chairperson**
2. The Hon. Timothy Wanyonyi, MP
3. The Hon. Alice Wahome, MP
4. The Hon. George Murugara, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Jennifer Shamalla, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. The Hon. Robert Mbui, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Waihenya Ndirangu, MP
5. The Hon. Daniel Maanzo, MP
6. The Hon. Kamoti Mwamkale, MP
7. The Hon. Martha Wangari, MP
8. The Hon. Ronald Tonui, MP
9. The Hon. (Dr.) Wilberforce Oundo, MP
10. The Hon. Abdi Koropu Tepo, MP
11. The Hon. Gideon Mulyungi, MP
12. The Hon. Kassait Kamket, MP
13. The Hon. Munene Wambugu, MP
14. The Hon. Muturi Kigano, MP
15. The Hon. Sammy Seroney, MP
16. The Hon. Tindi Mwale, MP

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Dima Dima - Principal Legal Counsel

MIN.NO. /NA/CDL/2020/062 PRAYER AND PRELIMINARIES

The meeting commenced with the Prayer at 10am, chaired by Hon. George Murugara, MP pursuant to SO 188 as proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Timothy Wanyonyi, MP.

MIN.NO. /NA/CDL/2020/063 ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda as proposed by Hon. Timothy Wanyonyi, MP and seconded by Hon. Jennifer Shamalla, MP.

MIN.NO. /NA/CDL/2020/064

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 11th Sitting held on 17th March, 2020 was deferred to the next sitting.

MIN.NO. /NA/CDL/2020/065

CONSIDERATION OF THE DRAFT PUBLIC FINANCE MANAGEMENT (COVID- 19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020;

The Committee was informed that on 27th March, 2020, the Cabinet Secretary responsible for the National Treasury submitted the draft Public Finance Management (Covid 19 Emergency Response Fund) Regulations, 2020 for consideration by the National Assembly.

The Regulations are made by the Cabinet Secretary for National Treasury and Planning in exercise of the powers conferred by section 24(4) of the Public Finance Management Act,2012.

Overview of the draft Regulations

PART I of the Regulations provide for the citation and definitions of terms used in the Regulations including the definition of “COVID 19” to mean an infectious disease caused by coronavirus.

PART II of the Regulations provides for establishment of the Fund as an Emergency Response Fund. It further provides for the Objects of the Fund to include, among other purposes –

- (i) Purchase of essential supplies for public hospitals- This should include any other place designated for COVID 19 including any centre, Hotels, Schools etc.
- (ii) Regulation 2(b) provides that the Fund is for programmes emergency relief for the older and poor persons in urban informal settlements- This should also include Rural populations lest it becomes discriminative and infringes on Article 27(4) of the Constitution and section 13 (a) of the Statutory Instruments Act.
- (iii) It also provides for the sources of the Fund to include appropriations by the National Assembly, voluntary contributions, grants, donations, bequests, gifts.

Voluntary contributions include contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.

- (iv) The Part provides generally for uses or expenditure of the Fund being for all payments in respect of any expenses incurred to achieve the objects of the Fund.

PART III deals with management of the Fund and establishes a Board of Management comprising twelve persons (12) including the Chairperson and a secretary. The membership of the Board however omits the Health ministry, yet it is a Funds on matters health (the eight persons include cannot include the PS being a public officer unless it is expressly provided for in the Regulations on membership).

Regulation 8 enumerates the functions of the Fund and Regulation 9 provides for the Administrator of the Fund, the functions of the administrator, the mechanisms of accounting for the fund, approvals and the designation of treasury staff (officers) as the secretariat of the Fund.

PART IV deals with Financial Provisions including authority to the Administrator to open bank accounts, restriction from overdrawing from the accounts and uses of withdrawals. Conformity to

procurement regulations, preparation of quarterly financial and non-financial reports {To whom should the reports be submitted and by when)

It also provides for accounts including keeping of proper books and records and preparation of Financial statements.

PART V deals with the General Provisions including the Presidential declaration on the lapse of the Fund and the procedure for winding up of the Fund upon such a declaration. Should there be a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved?

Committee Observations

Having considered the draft Regulations, the Committee resolved as follows –

	ISSUE	COMMITTEE REMARKS
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”
2.	Regulation 2	<p>(i) There should be a definition of “<i>COVID 19 isolation centre, quarantine centre etc</i>” “to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability (PWDs), widows and widowers.</p>
3.	Regulation 4(2)(a)	The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency

	ISSUE	COMMITTEE REMARKS
		medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.
4.	Regulation 4(2)(b)	Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... older and poor persons in urban informal setting . This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.
5.	Regulation 5	Regulation 5(b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.
6.	Regulation 7	The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the</p>

It was resolved that the concerns raised by the Committee be urgently communicated to the regulation making authority for incorporation before publishing of the Regulations.

**MIN.NO. /NA/CDL/2020/067 CONSIDERATION OF VALUE ADDED TAX
(AMENDMENT OF THE RATE OF TAX) ORDER, 2020**

The Committee was informed that the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 is made by the Cabinet Secretary for the National Treasury and Planning in exercise of the powers conferred by section 6(1) of the Value Added Tax Act (No. 25. of 2013, Laws of Kenya.).

Brief background and nature of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020

The Order was issued following the Executive Directive to the Cabinet Secretary to invoke his powers in the Value Added Tax Act to reduce the rate of value added tax on imported goods and services, to ease the tax burden on the public as a relief on the possible individual citizen's economic hardships that may be occasioned by the Coronavirus (COVID 19) pandemic .

Section 5(2) (b) of the Value Added Tax Act (No. 25. of 2013) deals with Charge to tax and provides that –

“The rate of tax ...in any other case shall be sixteen per cent [16%] of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services”.

Section 6(1) of the Value Added Tax Act allows the Cabinet Secretary to amend the rate of tax from 16% which is the rate specified in section 5(2)(b), and if he so amends the rate-

- a) the amendment of the rate must be done through an order published in the Gazette.*
- b) the amended rate of tax can only increase or decrease by an amount not exceeding twenty-five per cent [25%] of the rate specified in section 5(2)(b).*
- c) the order varying the rate must be laid before the National Assembly without unreasonable delay.*
- d) the National Assembly has a maximum of twenty (calendar) days within which to make a resolution approving or not approving the order.*
- e) where the National Assembly passes a resolution disapproving the order within the stipulated time (twenty days of the day on which the National Assembly next sits after the order is laid) the order ceases to have effect but without prejudice to anything previously done thereunder[i.e. any taxes charged at 14% will not be prejudiced and are presumed to be legitimate hence no refunds or claims may be made therefrom]*
- f) where the order is laid in the National Assembly (when the House is in session) and the stipulated time lapses without any resolution from the National Assembly, the order ceases to have effect, implying that the rate of value added tax reverts back to be sixteen percent (16%).*

Observations

- i) The Order is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, hence is subject to the requirements of the Statutory Instruments Act.**

- ii) Being a statutory instrument, it comes into force upon publication in the gazette or on the date specified in the order which for the instant was on the 1st of April, 2020.
- iii) Pursuant to Article 259(5) and (6) of the Constitution, if the Order is laid before the National Assembly on Tuesday, 14th of April, 2020 and with the presumption that the House resumes its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

If the National Assembly approves the Order within the stipulated time, the Order remains in force as published hence the rate of tax shall be 14% until it is varied by another Order made by the Cabinet Secretary.

- iv) **Resolution approving or not approving the Order to be made by the House (National Assembly) [and not a Committee of the House]**

Section 6(2) of the Value Added Tax Act (No. 25. of 2013) contemplates and expressly provides that a resolution approving the Order shall be by the House [and not by a committee of the House]

There are statutory instruments, resolutions of which are subject only to Committee approvals in accordance with Standing Order 210(4)(a) which provides that *“If the committee ...resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department. [The House does not need to ratify the approval].”*

Sections 17, 18 and 19 of the Statutory Instruments Act and Standing Order 210(4)(b) requires the Committee to table a resolution recommending an annulment to the House which the House may or may not adopt. Hence, contrary to SIs which are dealt with in accordance Standing Order 210(4) (a), the VAT Order has to be tabled and the resolution to approve or not approve the variation of the rates has to be arrived at by the House.

Statutory Timelines

- v) The Order was published in the Gazette vide Legal Notice No. 35 of 2020 on the 26th of March, 2020 and was submitted to the Clerk on 1st April, 2020, hence is within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act and was submitted without unreasonable delay in accordance to section 6 (2) of the VAT Act.
- vi) The Order is yet to be tabled before the House as contemplated under sections 28(2) and (3) of the Statutory Instruments Act since the House is on recess. If the Order is laid on the 14th of April, 2020 and on the presumption that the House proceeds with its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

Commencement/ Coming into force of the Order

- vii) The Order came into force on the 1st of April, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.

Consultation / Public participation

- viii) **The Ministry did not demonstrate the conduct of, or the extent to which public participation was conducted.** Section 13(q) of the Statutory Instruments Act gives the

Committee a latitude to consider whether the Statutory Instrument accords to any other reason (other than the ones specified in section 13) that the Committee considers fit to examine.

- ix) Pursuant to section 13(q) of the Act, the Committee took cognizance of the fact that the reduction of the rates is for the benefit of the general public and the nature and urgency of the circumstances created by COVID 19 and dispensed with the requirements of public participation contemplated under sections 5 and the Schedule to the Statutory Instruments Act.

Further, section 5A (2) of the Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

Regulatory Impact Statement

- x) The Order does not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since the reduction of rates is not likely to impose significant costs on the community. The Order on the other hand has the effect of reducing the rate of value added tax chargeable on goods and services from 16% to 14% hence is to the economic advantage of the general public, and may relieve the public from the economic hardships occasioned by the pandemic of COVID 19 in the country.

Way Forward

Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020, the Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (*No 23 of 2013*) pursuant to which is made and therefore resolved to **recommend to the House its approval.**

The approval was proposed by Hon. Patrick Mariru, MP and seconded by Hon. Fatuma Gedi, MP.

In accordance with the section 6(2) of the VAT Act, 2013, the Committee is expected to table a Report on the consideration of the Order for approval by the Whole House. It was therefore resolved that the next meeting be held on Tuesday, 7th April, 2020 at 10.00am to consider and adopt the Report.

MIN.NO. /NA/CDL/2020/067 ANY OTHER BUSINESS

No other business arose.

MIN.NO. /NA/CDL/2020/068 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.05 p.m. until further notice.

Signed:
for HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date: 14.4.2020

Approved for tabling

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON
THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (COVID-19 EMERGENCY
RESPONSE FUND) REGULATIONS, 2020

(Legal Notice No. 38 of 2020)

APRIL, 2020

*The Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.*

SNA
14/4/2020
PARLIAMENT
OF KENYA
LIBRARY

TABLE OF CONTENTS

ABBREVIATIONS	ii
CHAIRPERSON'S FOREWORD	1
1.0 PREFACE	3
1.1 <i>Establishment and Mandate of the Committee</i>	3
1.2 <i>Committee Membership</i>	4
1.3 <i>Committee Secretariat</i>	6
2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020	7
2.1 <i>Introduction and Background Information</i>	7
2.2 <i>Purpose of the Regulations</i>	7
2.3 <i>Overview of the Regulations</i>	8
3.0 SCRUTINY OF THE INSTRUMENT AND COMMITTEE OBSERVATIONS	9
4.0 COMMITTEE RECOMMENDATION	14
ANNEXURES	15



ABBREVIATIONS

COVID	Corona Virus Disease
PFM	Public Finance Management
LN	Legal Notice
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 vide Legal Notice No. 38 of 2020 dated 30th March, 2020.

The Regulations were submitted to the Clerk of the National Assembly in draft form on 27th March, 2020 for pre-publication consultations and subsequently in published form on 7th April, 2020. They were then tabled before the House on 14th April, 2020.

The Regulations seek to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.

The Fund is a response to the World Health Organization's declaration of COVID-19 as a global pandemic on 11th March, 2020 and His Excellency the President's directive to the National Treasury and other government institutions to contain the spread, effect and impact of COVID-19 pandemic in the country.

The Regulations seek to –

- (i) *establish and specify the sources, object and purpose of the Fund;*
- (ii) *provide for management of the Fund by a Board and an administrator of the Fund;*
- (iii) *provide for a robust governance and accountability framework for the resources received in this Fund; and*
- (iv) *provide for the expenditures of the Fund.*

With the instrument having been submitted to the Clerk of the National Assembly for scrutiny, the Committee commenced its consideration immediately by holding the first sitting on Thursday, 2nd April, 2020.

The Committee examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 and made the following observations –

- i) **Statutory Timelines:** The Regulations were published in the Gazette vide Legal Notice No. 38 of 2020 on 26th March, 2020 and submitted to the Clerk of the National Assembly on 7th April, 2020, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013.**
- ii) **Consultation / Public participation:** The regulation making authority published the Regulations both on their website and *The Daily Nation* and *The Standard* Newspapers of 31st March, 2020 which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public. The Kenya Law Reform Commission, the Commission for Revenue Allocation and the Institute of Certified Public Accountants of Kenya submitted their memoranda to

the National Treasury and the proposals taken into consideration prior to publication of the Regulations.

- iii) In addition, given the nature and urgency of the COVID-19 pandemic, the Committee pursuant to section 13(q) which provides for the latitude of other considerations, was **satisfied that the advertisement and the input from the institutions listed above serves as proof of sufficient consultation and public participation.**

The Committee also submitted to the National Treasury and Planning various issues of concern in relation to the Fund. The Ministry responded on 7th April, 2020 by providing a schedule of action taken on each of the concerns raised.

Having satisfied itself that the Regulations as published are in accord with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act (No. 18 of 2012) and the Statutory Instruments Act (No 23 of 2013) pursuant to which it is made, the Committee therefore **recommends that the House approves the said statutory instrument in accordance with section 24 (4) of the Public Finance Management Act, 2012.**

In conclusion, 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. I also want to express my heartfelt gratitude to the Members and staff of the Committee on Delegated Legislation for their commitment to duty especially during this difficult period of the COVID-19 pandemic.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 199 and section 24 (4) of the Public Finance Management Act, 2012; it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 (Legal Notice 38 of 2020)**

HON. GLADYS BOSS SHOLLEI CBS MP

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 accordance 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 –

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative

Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, CBS, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Democratic Party

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020

2.1 Introduction and Background Information

5. In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 on 30th March, 2020 vide Legal Notice No. 38 of 2020.
6. The Regulations were submitted to the Clerk of the National Assembly in draft form on 27th March, 2020 and in published form on 7th April, 2020. They were subsequently tabled before the House on 14th April, 2020.

2.2 Purpose of the Regulations

7. The Regulations seek to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.
8. The Fund is a response to the World Health Organization's declaration on 11th March, 2020 of COVID-19 as a global pandemic. Subsequently, His Excellency the President of the Republic of Kenya issued several directives to contain the spread, effect and impact of COVID-19 pandemic in the country. These include:
 - (i) Policy measures and behavioural protocols aimed at containing the spread of COVID-19, such as suspension of learning in all educational institutions, social distancing through minimizing congestion in public transport, shopping malls, entertainment joints and social gatherings;
 - (ii) Self-quarantine or compulsory-quarantine measures taken to ensure the safety of all Kenyans;
 - (iii) Implementation of strict evaluation and monitoring protocol, designed to proactively seek out and test persons who may be carriers of this virus;
 - (iv) Implementation of tax reliefs and other measures aimed at increasing disposable income to the people of Kenya, through:
 - a) 100% tax relief for persons earning gross monthly income of up to Kshs. 24,000;
 - b) Reduction of Income Tax Rate (Pay-As-You-Earn) from 30% to 25%;
 - c) Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;
 - d) Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs); and
 - e) Appropriation of an additional Kshs. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.

9. In recognition of the extra-ordinary nature of the pandemic and its enormous local effects, and conscious of the solemn duty of the Government to guarantee the enjoyment of social, civil and economic rights; the Fund will support the implementation of targeted State interventions to cushion every Kenyan from shocks arising from COVID-19.
10. To achieve this purpose, the Regulations seek to –
- (i) *establish and specify the sources, object and purpose of the Fund;*
 - (ii) *provide for management of the Fund by a Board and an administrator of the Fund;*
 - (iii) *provide for a robust governance and accountability framework for the resources received in this Fund;*
 - (iv) *provide for the expenditures of the Fund; and*
 - (v) *provide for Presidential Declaration that COVID-19 is no longer a threat to socio-economic and political stability in Kenya and consequently trigger the lapsing of the Fund and its subsequent winding up.*

2.3 Overview of the Regulations

11. **PART I** of the Regulations provide for the citation and definitions of terms used in the Regulations including the definition of “COVID-19” to mean an infectious disease caused by corona virus.
12. **PART II** of the Regulations provides for establishment of the Fund as an Emergency Response Fund. It further provides for the Objects of the Fund to include, among other purposes –
- (i) Purchase of essential supplies for public hospitals: This should include any other place designated for COVID-19 interventions including any centre, hotels, schools etc.
 - (ii) Regulation 2(b) provides that the Fund is for programmes emergency relief for the older and poor persons in urban informal settlements- This should also include Rural populations lest it becomes discriminative and infringes on Article 27(4) of the Constitution and section 13 (a) of the Statutory Instruments Act.
 - (iii) It also provides for the sources of the Fund to include appropriations by the National Assembly, voluntary contributions, grants, donations, bequests, gifts.

Voluntary contributions include contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.
 - (iv) The Part provides generally for uses or expenditure of the Fund being for all payments in respect of any expenses incurred to achieve the objects of the Fund.
13. **PART III** deals with management of the Fund and establishes a Board of Management comprising twelve persons (12) including the Chairperson and Secretary to the Board.

14. Regulation 8 enumerates the functions of the Fund and Regulation 9 provides for the Administrator of the Fund, the functions of the administrator, the mechanisms of accounting for the fund, approvals and the designation of treasury staff (officers) as the secretariat of the Fund.
15. **PART IV** deals with Financial Provisions including authority to the Administrator to open bank accounts, restriction from overdrawing from the accounts and uses of withdrawals. Conformity to procurement regulations, preparation of quarterly financial and non-financial reports {To whom should the reports be submitted and by when}
16. It also provides for accounts including keeping of proper books and records and preparation of Financial statements.
17. **PART V** deals with the General Provisions including the Presidential declaration on the lapse of the Fund and the procedure for winding up of the Fund upon such a declaration.

3.0 SCRUTINY OF THE INSTRUMENT AND COMMITTEE OBSERVATIONS

18. With the instrument having been submitted to the Clerk of the National Assembly for scrutiny, the Committee commenced its consideration immediately by holding the first sitting on Thursday, 2nd April, 2020.
19. The Committee examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 and made the following observations –

i) **Statutory Timelines:** The Regulations were published in the Gazette vide Legal Notice No. 38 of 2020 on 26th March, 2020 and submitted to the Clerk of the National Assembly on 7th April, 2020, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013.**

ii) **Consultation / Public participation:** The regulation making authority published the Regulations both on their website and *The Daily Nation* and *The Standard* Newspapers of 31st March, 2020 which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public. The Kenya Law Reform Commission, the Commission for Revenue Allocation and the Institute of Certified Public Accountants of Kenya submitted their memoranda to the National Treasury and the proposals taken into consideration prior to publication of the Regulations.

Given the nature and urgency of the COVID-19 pandemic, the Committee, pursuant to section 13(q) which provides for the latitude of other considerations, was **satisfied that the advertisement and the input from the institutions listed above serves as proof of sufficient consultation and public participation.**

iii) **Regulatory Impact Statement:** The Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are made pursuant to section 24 of Public Finance Management Act which permits

the Cabinet Secretary to establish a national government public Fund with the approval of the National Assembly.

iv) **Treasury Response to the issues raised by the Committee:** The following is a summary of the issues the Committee raised in respect to the Regulations and the response by the National Treasury dated 7th April, 2020.

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”	Accepted.
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” “to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability (PWDs), widows and widowers.</p>	<p><i>Accepted with amendments.</i></p> <p>The definition of essential supplies includes quarantine facilities and the term used is “<i>includes</i>”, which means foresees other areas which can be covered including isolation centres.</p> <p><i>Accepted.</i> The definition of the World Health Organisation is agreed upon with Ministry of Health.</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			<i>Accepted with amendments.</i> The definition of vulnerable persons includes persons without a clear means of livelihood. The National Treasury understanding is that not all widows and widowers are vulnerable and some of them have clear means of livelihood such as rental income, employment and business income.
3.	Regulation 4(2)(a)	The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.	<i>Not accepted.</i> Public hospitals include dispensaries, health centres, level 4, 5, and 6 hospitals and therefore any other hospital which will be designated by the government to receive COVID-19 patients and upon designation, such private hospitals shall be construed to be public institutions. The paragraph also refers to related institutions, hence broad enough to cover private health facilities handling COVID-19 cases.
4.	Regulation 4(2)(b)	Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... older and poor persons in urban informal setting. This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory	<i>Accepted with amendments.</i> All persons without clear means of livelihood including senior citizens and poor citizens are catered for. All informal settlements are for both big and small towns, who have been rendered vulnerable by COVID-19

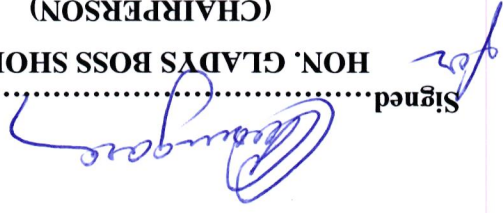
	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.	<p>pandemic and have no clear means of livelihood.</p> <p>Paragraph (f) provides for emerging issues which is broad enough.</p> <p>In addition, the Social Assistance fund will complement the COVID-19 Emergency Response Fund Regulations, 2020 to cushion other Kenyans who are also vulnerable.</p>
5.	Regulation 5	Regulation 5(b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.	<i>Accepted.</i> The word ‘private persons’ includes an individual or legal persons and therefore is catered for.
6.	Regulation 7	The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.	<i>Accepted with amendments.</i> The composition of the Board shall take into account gender balance. However, the Cabinet Secretary for Health is the Chairperson of the Cabinet Sub-Committee on health matters, which will be expected to justify the resource requirements of the health sector to the Board and therefore including him/her in the Board will lead to conflict of interest.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both	<i>Accepted.</i> All financial statements will be transmitted to the National Assembly after

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		Auditor General and the National Assembly.	audit by the Auditor General. This is provided for in Regulation 13.
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the monthly returns to the National Assembly for purposes of accountability.</p>	<p>The quarterly financial and non-financial reports are submitted to the National Treasury, Controller of Budget and Commission on Revenue Allocation in accordance with the provisions of the Public Finance Management Act, 2012 and its Regulations thereof.</p> <p><i>Accepted with amendments.</i></p> <p>Management reports are ordinarily not regulated such as monthly management reports. However, the National Assembly can request for any report and such report shall be submitted to the National Assembly within 14 days.</p> <p>In addition, all revenues received in the Fund shall on monthly basis be gazetted by the 21st day of the succeeding month. This is provided for under section 46 (2) of the PFM Act, 2012. This is already provided for in Reg. 13.</p>
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a	<i>Accepted.</i> The PFM Act, 2012 provides the manner in which all national

(CHAIRPERSON)

HON. GLADYS BOSS SHOLLEI CBS MP

Signed



Date.....

14.4.2020

4.0 COMMITTEE RECOMMENDATION

20. Having examined the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 (Legal Notice No. 38 of 2020), against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act, (No. 18 of 2012) and the Statutory Instruments Act, 2013 (No. 23 of 2013), the Committee recommends that the House approves the said statutory instrument in accordance with section 24(4) of the Public Finance Management Act, 2012.

NATIONAL TREASURY RESPONSE	COMMITTEE REMARKS	ISSUE	
<p>public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act and clearly states that the surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly.</p>	<p>saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.</p>		

ANNEXURES

1. Adoption List
2. Paper Laid: Legal Notice No. 38 of 2020 and Explanatory Memorandum
3. Newspaper advertisement dated 31st March, 2020
4. Committee Minutes

Committee on Delegated Legislation: Report on the Consideration of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 – Legal Notice 38 of 2020


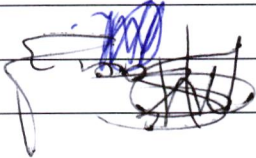

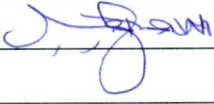
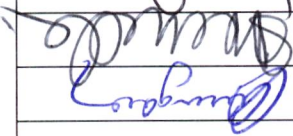
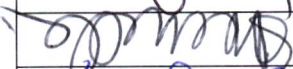

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION SCHEDULE

**Report on the Consideration of Public Finance Management (COVID-19
Emergency Response Fund) Regulations, 2020**

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

DATE: 14 April 2020

HON. MEMBER	SIGNATURE
1. Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2. Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3. Hon. Isaac Waihenya Ndirangu, MP	
4. Hon. Robert Mbu, MP	
5. Hon. Alice Wahome, MP	
6. Hon. Daniel Maanzo, MP	
7. Hon. Muriuki Njaguna, MP	
8. Hon. Martha Wangari, MP	
9. Hon. Timothy Wanyonyi, MP	
10. Hon. William Kamoti Mwamkale, MP	
11. Hon. Patrick Karuki Maritu, MP	
12. Hon. Ronald Kiprotich Tonui, MP	
13. Hon. William Kassait Kamket, MP	
14. Hon. Muenene Wambugu, MP	
15. Hon. George Gitonga Murugara, MP	
16. Hon. Jennifer Shamalla, MP	
17. Hon. Muturi Kigano, MP	
18. Hon. (Dr.) Wilberforce Oundo, MP	
19. Hon. Sammy Seroney, MP	
20. Hon. Tindi Mwale, MP	
21. Hon. Gideon Mulyungi, MP	
22. Hon. Abdi Tpo, MP	
23. Hon. Alfred Sambu, MP	



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance-Nairobi
Fax No.: 310833
Telephone: 2252299
When Replying Please Quote;

THE NATIONAL TREASURY
P.O. Box 30007
NAIROBI

REF. No. TNT/CONF 158/01/C/14

6th April, 2020

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI.

DLSP - for tabling

Plans - for information of the Committee

Dear *Sialai*,

RE: THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020
LEGAL NOTICE NO. 38

CMA

7/21/20

The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 have been published vide Legal Notice No. 38.

Towards this end, the National Treasury is submitting the following documents in accordance with the Statutory Instruments Act, 2013 to the National Assembly for further necessary action:-

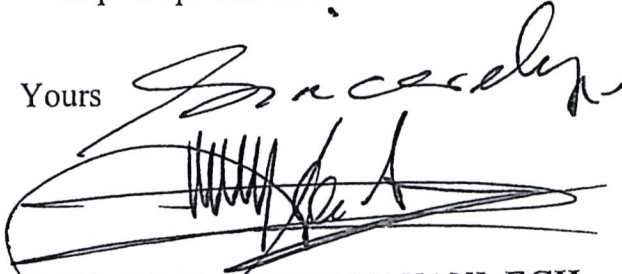
- a. The published Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 Legal Notice No. 38;
- b. A signed Explanatory Memorandum;
- c. The evidence of public participation while developing the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 and the public notice inviting the general public to submit comments; and
- d. A Matrix on all comments/inputs received from the National Assembly's Committee on Delegated Legislation and general public and the rationale for each.

01 APR 2020

The purpose of this letter, therefore, is to submit the above-mentioned documents to the National Assembly for your further necessary action.

Your prompt attention and action on this matter will be highly appreciated.

Yours



HON. (AMB) UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to: Hon. Paul Kihara Kariuki, CBS, SS
Attorney General
State Law Office & Department of Justice
Sheria House
NAIROBI

Julius Muia, PhD, CBS
Principal Secretary
National Treasury
National Treasury & Planning
NAIROBI

Kennedy Ogetto, EBS
Solicitor General
Office of the Attorney General
Sheria House
NAIROBI

SPECIAL ISSUE

Kenya Gazette Supplement No. 31A

(Legislative Supplement No. 19A)

525

27th March, 2020

LEGAL NOTICE NO. 38

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

**THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

Arrangement of Regulations

Clause

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—ESTABLISHMENT OF THE FUND

3—Establishment of the COVID-19 Emergency Response Fund.

4—Object and Purpose of the Fund.

5—Sources of the Fund.

6—Expenditure of the Fund.

PART III—MANAGEMENT OF THE FUND

7—Board of the Fund.

8—Functions of the Board.

9—Administrator of the Fund.

PART IV—FINANCIAL PROVISIONS OF THE FUND

10—Bank Accounts of the Fund.

11—Overdrawn account.

12—Withdrawals from the Fund.

13—Financial and Procurement Regulations.

14—Quarterly Reports.

15—Accounts of the Fund.

PART V—GENERAL PROVISIONS

16—Presidential Declaration and Lapse of the Fund.

17—Winding up of the Fund.

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (COVID-19
EMERGENCY RESPONSE FUND) REGULATIONS, 2020

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

THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020	
PART I—PRELIMINARY	
1. These Regulations may be cited as the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.	Citation.
2. In these Regulations, unless the context otherwise requires—	Interpretation.
“Act” means the Public Finance Management Act, 2012	
“Administrator of the Fund” means a person designated as such under Regulation 9 of these Regulations;	
“Board” means the COVID-19 Emergency Response Fund Board established under Regulation 7 of these Regulations;	
“Cabinet Secretary” has the meaning assigned to it under Section 2 of the Act;	
“COVID-19” means an infectious disease caused by coronavirus;	
“essential supplies” includes human medicine, medical equipment, medical consumables, medical protective gear, quarantine facilities, COVID-19 test kits, food, logistics, water, electricity and medical disposal bins;	
“frontline workers” includes immigration officers, customs officers, security officers, community health assistants and volunteers;	
“Fund” means the COVID-19 Emergency Response Fund established under Regulation 3 of these Regulations;	
“voluntary contributions” includes voluntary pay cuts, voluntary salary contributions, subscriptions, donations and gifts; and	
“vulnerable persons” includes persons with special needs such as older persons, pregnant women, orphans, vulnerable child and persons without a clear means of livelihood.	
PART II—ESTABLISHMENT OF THE FUND	
3. There is established a Fund to be known as the COVID-19 Emergency Response Fund.	Establishment of the Fund.
4. (1) The object and purpose of the Fund shall be to mobilize resources for emergency response towards containing the spread,	Object and purpose of the

effect and impact of COVID-19 pandemic.	Fund.
(2) Notwithstanding the generality of sub regulation (1) the purpose of the Fund shall include the following—	
(a) to fund the purchase of essential supplies for public hospitals and other related institutions, health professionals and frontline workers, as need arises;	
(b) to fund programmes and initiatives towards cushioning and provision of emergency relief to the most vulnerable, older and poor persons in urban informal settlements;	
(c) to support and stimulate micro, small and medium enterprises rendered vulnerable by COVID-19 pandemic;	
(d) to fund restoration of the facilities being used for compulsory quarantine for safe use by the hosting institutions;	
(e) to enhance the capacity of the relevant research institutions in handling COVID-19 surveillance; and	
(f) to fund any other emerging issue arising from the COVID-19 pandemic.	
5. The Fund shall consist of—	Sources of the Fund.
(a) monies appropriated by National Assembly for purposes of the Fund;	
(b) voluntary contributions from public officers and private persons;	
(c) grants, donations, subscriptions, bequests or other gifts made to the Fund; and	
(d) monies from any other source approved by the Cabinet Secretary.	
6. There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established.	Expenditure of the Fund.
PART III—MANAGEMENT OF THE FUND	
7. (1) There is hereby established a board to be known as COVID-19 Emergency Response Fund Board which shall comprise of—	Board of the Fund.
(a) a Chairperson appointed by the President;	
(b) Cabinet Secretary responsible for matters relating to Interior and Co-ordination of National Government;	
(c) Chairperson of the Council of County Governors; and	
(d) Eight other members, who shall not be public officers, appointed by the President.	
(2) There shall be a Secretary to the Board appointed by the President and whose duties shall be specified in the appointing instrument.	
8. The functions of the Board shall be—	Functions of the

	Board.
(a) to consider and recommend the estimates of revenue to and expenditure from the Fund to the Cabinet Secretary for approval;	
(b) to approve the opening and closing of bank accounts in accordance with the Act;	
(c) to approve disbursements from the Fund;	
(d) to receive, review and approve reports on the performance of the Fund;	
(e) to oversee the monitoring and evaluation of the programmes and activities under the Fund;	
(f) to approve the financial statements of the Fund prepared in accordance with the Act;	
(g) to consult with the Cabinet Secretary on matters relating to the administration of the Fund; and	
(h) to perform any other functions that shall be assigned by the Cabinet Secretary.	
9. (1) The Administrator of the Fund shall be the Principal Secretary for the time being responsible for matters relating to finance.	Administrator of the Fund.
(2) The Administrator of the Fund shall exercise the following functions—	
(a) supervise and control the administration of the Fund;	
(b) prepare estimates of annual revenue and expenditure of the Fund relating to its obligations and operational expenses and submit it to the Board for adoption;	
(c) cause to be established proper systems of control and oversight under the provisions of the Act;	
(d) advise and consult the Board on matters relating to the administration of the Fund;	
(e) prepare non-financial performance reports of the Fund and submit them to the Board for adoption;	
(f) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;	
(g) prepare, sign and transmit to the Auditor-General financial statements in accordance with the Act; and	
(h) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.	
(3) Upon approval by the Board, the Administrator of the Fund shall submit estimates of revenue and expenditure to the Cabinet Secretary for approval.	
(4) The Administrator of the Fund shall designate officers under the National Treasury as the secretariat to the Fund.	
PART IV—FINANCIAL PROVISIONS	

10. (1) The Administrator of the Fund may open bank accounts with the approval of the Board in the name of the Fund with a bank as may be approved by the National Treasury.	Bank accounts for the Fund.
(2) All moneys payable into the Fund shall be received into the bank accounts of the Fund.	
11. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.	Overdrawn accounts.
12. (1) Withdrawals from the Fund shall only be for purposes of promoting the objects and purpose for which the Fund is established.	Withdrawals from the Fund.
(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.	
13. The Fund shall be governed in accordance with the financial and procurement laws and Regulations as applicable.	Financial and procurement Regulations.
14. The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the Act.	Quarterly reports.
15. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.	Accounts of the Fund.
(2) The Administrator of the Fund shall prepare financial statements of the Fund in accordance with the Act.	
PART V—GENERAL PROVISIONS	
16. (1) The President may, in consultation with the Cabinet Secretary responsible for matters relating to health, and by Notice in the Gazette, declare that COVID-19 pandemic is no longer a threat to the social, economic and political stability of the country.	Presidential declaration and lapse of Fund.
(2) Upon such declaration as provided for under paragraph (1), the Fund shall lapse.	
17. Upon the lapsing of the Fund in the manner provided for under regulation 16, the Fund shall be wound up in accordance with the provisions of the Act and Regulations made thereunder.	Winding up of the Fund.

Dated the 27th March, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020

.....

I. The Purpose of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

1. These Regulations propose to establish the COVID-19 Emergency Response Fund under Section 24 of the Public Finance Management Act, to provide for a framework to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.
2. The World Health Organization (WHO) on 11th March, 2020 declared COVID-19 a pandemic, pointing to the over 300,000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
3. Subsequently, His Excellency the President of the Republic of Kenya has issued several directives to contain the spread, effect and impact of COVID-19 pandemic in the country. These include:
 - a. Policy measures and behavioural protocols aimed at containing the spread of COVID-19, such as suspension of learning in all educational institutions, social distancing through minimizing congestion in public transport, shopping malls, entertainment joints and social gatherings;
 - b. Self-quarantine or compulsory-quarantine measures taken to ensure the safety of all Kenyans;
 - c. Implementation of strict evaluation and monitoring protocol, designed to proactively seek out and test persons who may be carriers of this virus;
 - d. Implementation of tax reliefs and other measures aimed at increasing disposable income to the people of Kenya, through:
 - i. 100 % Tax Relief for persons earning gross monthly income of up to Ksh. 24,000,
 - ii. Reduction of Income Tax Rate (Pay As - You - Earn) from 30% to 25%,
 - iii. Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;

- iv. Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs); and
 - v. Appropriation of an additional Ksh. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.
- e. In recognition of the extra-ordinary nature of this global tragedy and its enormous local effects, and conscious of the solemn duty of the Government to guarantee the enjoyment of social, civil and economic rights; this Fund will support the implementation of targeted state interventions to cushion every Kenyan from shocks arising from COVID-19.
4. To achieve this purpose, the Regulations in particular:
- a. establish and specify the sources, object and purpose of the Fund;
 - b. provide for management of the Fund, by a Board and an administrator of the Fund;
 - c. provide for a robust governance and accountability framework for the resources received in this Fund;
 - d. provide for the expenditures of the Fund; and
 - e. provide for Presidential Declaration that COVID -19 is no longer a threat to socio-economic and political stability of this great national and consequently trigger the lapsing of the Fund and its subsequent winding up.

II. The Legislative Context:

5. The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012. Towards this end, this Fund is proposed to be established under the section.
6. Taking into account the extra-ordinary nature of this global tragedy and its enormous local effects, including the directives on social distancing, the National Treasury has not subjected these Regulations to public consultations, as required under the Statutory Instruments Act, 2013.

III. Policy Background

7. COVID-19 is an infectious disease caused by coronavirus, which is highly contagious and it's mainly spread from person-to-person.
8. On 11th March, 2020, WHO declared COVID-19 a pandemic, pointing to the over 300, 000 cases of the coronavirus illness in over 110 countries and territories around the world and the sustained risk of further global spread.
9. Consequently, the Government of Kenya has put in place a raft of policy measures, behavioural protocols and economic reliefs aimed at containing the spread of COVID-19.

IV. Public Consultations

10. The National Treasury published the Regulations both on its website, the Daily Nation and the Standard Newspapers of 31st March, 2020, which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5.00 pm for submission of comments / views and memoranda from stakeholders and the general public. A report from the comments received from the public including the comments from the National Assembly's Committee on Delegated Legislation, on the Regulations and action taken by the National Treasury is attached as an Appendix to this Explanatory Memorandum.

V. Guidance

11. The National Treasury and the Ministries of Interior and Coordination of National Government; Health; Agriculture, Livestock, Fisheries and Co-operatives; Industry and Trade will sensitize stakeholders including Parliament, and the general public, on the provisions of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

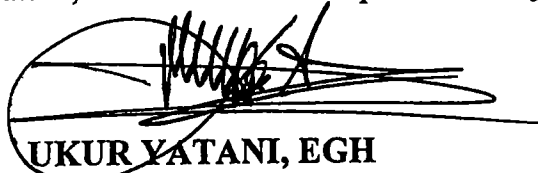
VI. Performance Monitoring and Evaluation of the Fund

12. The National Treasury shall monitor the application of the COVID-19 Emergency Response Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, COVID-19 Emergency Response Fund Board shall be responsible for implementing the Fund and will also carry out regular monitoring and

evaluation of the specific programmes, projects and develop policies relating to the general administration and management of the Fund.

VII. National Treasury Contact Person.

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



UKUR YATANI, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY AND
PLANNING

Date.....7th April, 2020.....



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

Telegraphic Address: 22921
Finance – Nairobi
- 00100 FAX NO. 310833
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007
NAIROBI

When Replying Please Quote

**COMMENTS BY THE COMMITTEE ON DELEGATED LEGISLATION (NA),
COMMISSION ON REVENUE ALLOCATION, KENYA LAW REFORM
COMMISSION AND THE INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS OF KENYA ON THE PUBLIC FINANCE MANAGEMENT
(COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020**

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”	<i>Accepted.</i>
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The</p>	<p><i>Accepted with amendments.</i> The definition of essential supplies includes quarantine facilities and the term used is “<i>includes</i>”, which means it foresees other areas which can be covered including isolation centers.</p> <p><i>Accepted.</i> The Definition is the World Health Organization definition, which is common and agreed with the Ministry of Health.</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>Ministry may consider consulting health experts to properly define "COVID19" since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of "vulnerable persons" should include persons with disability(PWDs), widows and widowers.</p>	<p><i>Accepted with amendments.</i> The definition of vulnerable persons includes persons without a clear means of livelihood. The National Treasury understanding is that not all widows and widowers are vulnerable and some of them have clear means of livelihood such as rental income, employment income and business income.</p>
3.	Regulation 4(2)(a)	<p>The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.</p>	<p><i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions.</p> <p>The paragraph also refers to related institutions, hence broad enough to cover private health facilities handling COVID-19 cases.</p>
4.	Regulation 4(2)(b)	<p>Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning...older and poor persons in urban informal</p>	<p><i>Accepted with amendments.</i> All persons without clear means of livelihood including senior citizens and poor persons are catered for. All</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		<p>setting. This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.</p>	<p>informal settlements are catered for both big and small towns, who have been rendered vulnerable by COVID-19 pandemic and have no clear means of livelihood.</p> <p>Para. (f) provides for emerging issues which is broad enough.</p> <p>In addition, the Social Assistance Fund will complement the COVID-19 Emergency Respond Fund Regulations, 2020 to cushion other Kenyans who are also vulnerable.</p>
5.	Regulation 5	<p>Regulation 5 (b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.</p>	<p><i>Accepted.</i> The word “private persons” includes a natural persons or legal persons and therefore this is catered.</p>
6.	Regulation 7	<p>The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.</p>	<p><i>Accepted with amendments.</i> The composition of the Board shall take into account the gender balance. However, the Cabinet Secretary / Health is the Chairperson of the Cabinet Sub-Committee on Health matters, which will be expected to justify the resource requirements of the Health Sector to the Board and therefore including him /</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			her in the Board will lead to a conflict of interest.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.	<i>Accepted.</i> All financial statements will be transmitted to the National Assembly after audit by the Auditor General. This is already provided for in Reg. 13
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the monthly returns to the National Assembly for purposes of accountability.</p>	<p>The quarterly financial and non-financial reports are submitted to the National Treasury, Controller of Budget and Commission on Revenue Allocation in accordance with the provisions of the Public Finance Management Act, 2012 and its Regulations thereof.</p> <p><i>Accepted with amendments.</i> Management reports are ordinarily not regulated such as monthly management reports. However, the National Assembly can request for any report and such report shall be submitted to the National Assembly, within fourteen days.</p> <p>In addition, all revenues received in this Fund shall on monthly basis be gazetted on or by the 21st Day of the succeeding month. This is</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			provided for under Section 46 (2) of the Public Finance Management Act, 2012. This is already provided for in Reg. 13
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.	Accepted. The Public Finance Management Act, 2012 provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly.
COMMENTS / INPUTS FROM KENYA LAW REFORM COMMISSION			
10.	Regulation 2	In the definition of “essential supplies “ to include soap and alcohol based sanitizers and any other item that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more items than what is listed.
11.	Regulation 2	In the definition of “frontline workers” to include airline crew, airport personnel and any other category of workers that the Board may determine.	Accepted. In the definition of essential supplies, the key word is “includes” meaning the list is not exhaustive and therefore it will include more categories than what is listed.

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
12.	Regulation 2	Clarify the definition of vulnerable persons.	Accepted. In the definition of " <i>vulnerable persons</i> ", the key word is " <i>includes</i> " meaning the list is not exhaustive and therefore it will include street children and families as long as they have no clear means of livelihood. As suggested above.
13.	Application	Include a paragraph to the effect that the Regulations shall cover prevention and treatment measures in all parts of the Republic	Not accepted. All parts of Kenya include private residencies where citizens have been directed to self-quarantine and therefore litigious Kenyans can later after COVID-19 sue the Government that their costs should have been catered for while under quarantine. Already the quarantined Kenyans have started demanding that the Government should pay on their behalf. The general objective is clear.
14.	Regulation 7 (2)	Amend the Regulation to provide that Secretary will be an <i>Ex-Official Board Member</i>	Not accepted. The Secretary for this Board, will be equivalent to a Corporation Secretary, who will not be an ex-official Member of the Board.
15.	Regulation 14	Amend to include ad-hoc reports as may be required from time to time.	Accepted. The National Assembly or the Board have the powers under the law to request for an ad-hoc report and such report shall be prepared and submitted within fourteen days. Therefore, we

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			do not need to legislate what is already legislated. This is already provided for in Reg. 13.
16.		Provide for powers for the Cabinet Secretary to exempt a tax obligation on a tax payer who make donations to the Fund or provides other services promoting the objective of the Fund.	Not accepted. Subsidiary legislation cannot amend a principal law. This is a subsidiary legislation and there are principal laws dealing with tax exemption matters such as Income Tax, VAT Act, among others and therefore this proposal should be channeled towards the specific law and not a subsidiary legislation.
17.		Consider making a provision for the Board to co-opt experts in the Board.	Not accepted. The Cabinet has set up technical sub-committees which will deal with the technical issues, whereas the Board will deal with the mobilization of resources and allocation of the same based on the submitted technical needs. Towards this end, the experts are required at the technical level and not the Board level.
18.		Consider a provision for reimbursement of Board expenses.	Not Accepted. The Board members are eminent persons who will provide pro-bono services as part of their corporate social responsibility to the nation during COVID-19 pandemic.
19.	Regulation 17	Provide specifically for the winding up process of the Fund.	Accepted with amendments. The Public Finance Management Act, 2012

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			provides the manner in which all national public funds shall be wound-up. Towards this end, the COVID-19 Emergency Response Fund shall be wound-up in accordance with the provisions of the Act and the Regulations made thereof. The provisions of the Act state clear that surplus funds shall be deposited into the Consolidated Fund, whereas any liabilities of the Fund shall be paid from the Consolidated Fund, with the approval of the National Assembly. Reg. 17 is clear on the process.
COMMENTS / INPUTS FROM COMMISSION ON REVENUE ALLOCATION			
20.	Regulation 2	Definition of the word " <i>vulnerable persons</i> " which includes " <i>persons without a clear means of livelihood</i> " is very subjective and needs clarity.	Not accepted. In the definition of " <i>vulnerable persons</i> ", the key word is "includes" meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization.
21.	Regulation 4 (b)	Is specific on provision of emergency relief to poor persons in urban informal settlements to the exclusion of the rural poor who should also be catered for by the Fund.	Not accepted. The rural poor are taken care of by the Social Assistance Fund. In addition, in emergency relief to poor persons in urban informal settlements are made to address the effect of the urban poor who will be rendered non-productive due to COVID-19 Pandemic as a result of lock-down and these

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			will be required to stay in-doors for the period of the lock-down.
22.		Board allowances and expenses	<i>Not Accepted.</i> This Board will not receive any Board allowances and their services will be pro-bono as their contribution to the society. This is a corporate social responsibility by the Board.
COMMENTS / INPUTS FROM INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)			
23.	Regulation 2	Definition of “vulnerable persons” leaves out an important group i.e. street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood.	<i>Not accepted.</i> In the definition of “vulnerable persons”, the key word is “includes” meaning the list is not exhaustive and therefore it will include all vulnerable persons regardless of their categorization including the street families, special needs, pregnant women, orphans, persons without a clear and independently verifiable means of livelihood.
24.	Regulation 4	To include any other duly registered / licensed health facility that is in the view of the Board is offering relief for patients immediately after public hospitals. Amend sub-regulation (b) to include ...women, older members of society, persons with disabilities, children, youth, members of minority or	<i>Not accepted.</i> Public hospitals include dispensaries, health centers, level 4 hospital, level 5 hospitals and level 6 hospitals and therefore any other hospital which will be designated by Government to receive COVID-19 patients, and upon designation, such private hospitals shall be construed to be public institutions. The paragraph also refers to related institutions, hence broad

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		marginalized communities.	enough to cover private health facilities handling COVID-19 cases.
25.	Regulation 5	<p>Expand the sources of monies to the Fund to include:-</p> <p>a. Monies unutilized from unclaimed asset Funds;</p> <p>b. Forfeiture of seized cash and cash equivalents from proceeds of crime including proceeds of drug trafficking and anti-money laundering activities;</p> <p>c. All proceeds recovered from graft and corruption cases;</p> <p>d. Fines and sanctions imposed under the Public Health Act and Environmental Management and Coordination Act.</p>	<p>Not Accepted. The applications of the identified sources of revenues by the Institute are guided by the specific statutes, which have stated where the revenues shall be directed to. For example, the proceeds of Crime and Anti-Money Laundering Act states that all proceeds of crime should be remitted to the Consolidated Fund. Towards this end, a subsidiary legislation cannot amend a principal law to direct the revenues elsewhere.</p>
26.	New Regulation	<p>The new Regulation to state as follows:-</p> <p>“At least 40% from the National Government Contingency Fund and at least 25% from each County Emergency Fund as stipulated under Section 110 of the Public Finance Management Act, 2012 shall be consolidated and re-allocated to COVID-19 Emergency Response Fund.</p>	<p>Not Accepted. The Public Finance Management Act, 2012 has clear provisions on how the Contingency Fund and County Emergency Funds shall be accessed and utilized. Therefore this proposed amendment is not made for posterity and therefore is not supported by the National Treasury. In addition, the a subsidiary legislation cannot amend an Act of Parliament, which directs how the Contingency Fund and County Emergency Fund shall</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			be utilized.
27.	Regulation 6	To add a definition on the “unauthorized expenditure”	<i>Accepted with amendments.</i> The Public Finance Management Act, 2012 which is the principal law, and therefore these Regulations are being made under the Public Finance Management Act, 2012 and therefore the definition will also apply for these Regulations. In addition, this will be a repetition.
28.	Regulation 7 (2)	<p>To add “subject to the general supervision and direction of the Fund Administrator, the Secretary shall be the Chief Executive Officer responsible for the management of the operation of the Fund, management of funds, property and business of the Board; and Fundraising.</p> <p>Proposes to provide for the qualification of the Chairperson and Board members to be a citizen of Kenya, knowledge or experience in disaster management of not less than 15 and 10 years for Chairperson and Members respectively and inclusion of the Cabinet Secretary / Health and an expert in infectious diseases in the Board.</p> <p>Proposes that the Regulations provide for remuneration of the Board members.</p>	<p><i>Not accepted.</i> The roles of the Secretary and the Fund Administrator are totally different and therefore the Secretary should not be subjected to the Administrator.</p> <p><i>Not Accepted.</i> The Board will be supported by competent technical secretariat. This is in addition to the PFM roles including fund-raising.</p> <p><i>Not Accepted.</i> The Board shall not be remunerated and therefore there is no need to provide for the remuneration of Board.</p> <p><i>Accepted.</i> The tenure of the Board shall lapse with the</p>

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
		The tenure of the Board to be made clear that the Board will cease to be in place upon the lapse of the Fund, as guided by Regulation 16.	Fund. Therefore this is already provided for in the Regulations.
29.	Regulation	<p>The Institute proposes either of the following options:-</p> <p>a. Expand the mandate of the Secretary to the Board to include responsibilities of the Administrator of the Fund and include designated staff of the National Treasury to support as Secretariat to the Board. In essence, delete Regulation 9 and take those functions to the Secretary.</p> <p>Or</p> <p>b. include the Principal Secretary (Administrator of the Fund) among members of the Board.</p>	<p>Not accepted. The Role of the Administrator of a National Public Fund is a public finance management role, assigned by the Constitution as the Accounting Officer under Article 226 (2) of the Constitution. An Accounting Officer is accountable to the National Assembly for application of public resources. The Role of a Secretary of a Board is administrative and can be assigned to any public officer. A Secretary of a Board is accountable to the Board for proper functioning of the Board.</p> <p>Towards this end, these are distinct roles, which cannot be merged due to their levels of accountability.</p>
30.	Regulation 14.	The Institute proposes that "quarterly reports be published and publicized"	<i>Accepted.</i> The provisions of the Public Finance Management Act, 2012 are very clear that any report prepared under Public Finance Management Act, 2012 which includes quarterly financial and non-financial reports shall be published and publicized. This is provided for under Section 2 of the Public

	ISSUE	COMMITTEE REMARKS	NATIONAL TREASURY RESPONSE
			Finance Management Act, 2012. Once reports are published and publicized, they are public documents and any person / institution which requires a copy they can download it from the National Treasury at any time of their choice.
31.	New proposal	The institute proposes an Administration cost of up to 5%	<i>Not Accepted.</i> The Fund shall have no administration costs and therefore all the funds shall be applied towards COVID-19 Pandemic. Each implementing government institution shall apply their own resources allocated by National Assembly to deal with any administration costs. In addition, the Board shall not draw any remuneration.

MINUTES OF THE 12TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 2ND APRIL, 2020 AT 11.30 A.M. IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Fatuma Gedi, CBS, MP** - Vice Chairperson
2. The Hon. Timothy Wanyonyi, MP
3. The Hon. Alice Wahome, MP
4. The Hon. George Murugara, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Jennifer Shamalla, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP** - Chairperson
2. The Hon. Robert Mbui, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Waihenya Ndirangu, MP
5. The Hon. Daniel Maanzo, MP
6. The Hon. Kamoti Mwamkale, MP
7. The Hon. Martha Wangari, MP
8. The Hon. Ronald Tonui, MP
9. The Hon. (Dr.) Wilberforce Oundo, MP
10. The Hon. Abdi Koropu Tepo, MP
11. The Hon. Gideon Mulyungi, MP
12. The Hon. Kassait Kamket, MP
13. The Hon. Munene Wambugu, MP
14. The Hon. Muturi Kigano, MP
15. The Hon. Sammy Seroney, MP
16. The Hon. Tindi Mwale, MP

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Dima Dima - Principal Legal Counsel

MIN.NO. /NA/CDL/2020/062

PRAYER AND PRELIMINARIES

The meeting commenced with the Prayer at 10am, chaired by Hon. George Murugara, MP pursuant to SO 188 as proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Timothy Wanyonyi, MP.

MIN.NO. /NA/CDL/2020/063

ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda as proposed by Hon. Timothy Wanyonyi, MP and seconded by Hon. Jennifer Shamalla, MP.

MIN.NO. /NA/CDL/2020/064

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 11th Sitting held on 17th March, 2020 was deferred to the next sitting.

MIN.NO. /NA/CDL/2020/065

CONSIDERATION OF THE DRAFT PUBLIC FINANCE MANAGEMENT (COVID- 19 EMERGENCY RESPONSE FUND) REGULATIONS, 2020;

The Committee was informed that on 27th March, 2020, the Cabinet Secretary responsible for the National Treasury submitted the draft Public Finance Management (Covid 19 Emergency Response Fund) Regulations, 2020 for consideration by the National Assembly.

The Regulations are made by the Cabinet Secretary for National Treasury and Planning in exercise of the powers conferred by section 24(4) of the Public Finance Management Act,2012.

Overview of the draft Regulations

PART I of the Regulations provide for the citation and definitions of terms used in the Regulations including the definition of "COVID 19" to mean an infectious disease caused by coronavirus.

PART II of the Regulations provides for establishment of the Fund as an Emergency Response Fund. It further provides for the Objects of the Fund to include, among other purposes –

- (i) Purchase of essential supplies for public hospitals- This should include any other place designated for COVID 19 including any centre, Hotels, Schools etc.
- (ii) Regulation 2(b) provides that the Fund is for programmes emergency relief for the older and poor persons in urban informal settlements- This should also include Rural populations lest it becomes discriminative and infringes on Article 27(4) of the Constitution and section 13 (a) of the Statutory Instruments Act.
- (iii) It also provides for the sources of the Fund to include appropriations by the National Assembly, voluntary contributions, grants, donations, bequests, gifts.

Voluntary contributions include contributions from public officers and "private persons". Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.

- (iv) The Part provides generally for uses or expenditure of the Fund being for all payments in respect of any expenses incurred to achieve the objects of the Fund.

PART III deals with management of the Fund and establishes a Board of Management comprising twelve persons (12) including the Chairperson and a secretary. The membership of the Board however omits the Health ministry, yet it is a Funds on matters health (the eight persons include cannot include the PS being a public officer unless it is expressly provided for in the Regulations on membership).

Regulation 8 enumerates the functions of the Fund and Regulation 9 provides for the Administrator of the Fund, the functions of the administrator, the mechanisms of accounting for the fund, approvals and the designation of treasury staff (officers) as the secretariat of the Fund.

PART IV deals with Financial Provisions including authority to the Administrator to open bank accounts, restriction from overdrawing from the accounts and uses of withdrawals. Conformity to

procurement regulations, preparation of quarterly financial and non-financial reports {To whom should the reports be submitted and by when)

It also provides for accounts including keeping of proper books and records and preparation of Financial statements.

PART V deals with the General Provisions including the Presidential declaration on the lapse of the Fund and the procedure for winding up of the Fund upon such a declaration. Should there be a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved?

Committee Observations

Having considered the draft Regulations, the Committee resolved as follows –

	ISSUE	COMMITTEE REMARKS
1.	Arrangement of Regulations	In the title to the “Arrangement of Regulations” delete the word “clause” and substitute therefor the word “Regulations”
2.	Regulation 2	<p>(i) There should be a definition of “COVID 19 isolation centre, quarantine centre etc” “to cater for other facilities currently used for these services including schools that are proposed to be used for isolation and quarantine and which may need to be funded as there shall be provision of services like cleaning, feeding etc which may need to be funded from the Fund.</p> <p>(ii) In the definitions, “COVID19” means an infectious disease caused by coronavirus. The Ministry may consider consulting health experts to properly define “COVID19” since from a legal standpoint, it is possible that coronavirus may cause other infectious diseases which may not be the target of the Fund.</p> <p>(iii) Definition of “vulnerable persons” should include persons with disability (PWDs), widows and widowers.</p>
3.	Regulation 4(2)(a)	The Funding appears to target only public health service providers, some emergency cases may be handled by private health facilities like religious centres with health facilities, catholic mission Hospitals and clinics before referrals are done. There should be room for the Cabinet Secretary to approve funding of specific private institutions from the Fund where necessary. [Article 43(2) of the Constitution provides that "a person shall not be denied emergency

	ISSUE	COMMITTEE REMARKS
		medical treatment] It may therefore provide for compensation in case of emergency medical treatment on COVID 19 in a private hospital.
4.	Regulation 4(2)(b)	Regulation 4(2)(b) provides for the funding of programmes and initiatives towards cushioning... older and poor persons in urban informal setting . This appears discriminative to older and poor persons in Rural settings making the provision to infringe on Article 27(4) of the Constitution and section 13(a) of the Statutory Instruments Act. It should also expressly address as persons to be funded to include senior citizens and poor persons in the are residents of densely populated informal townships/markets or residential centres in the rural areas.
5.	Regulation 5	Regulation 5(b) provides as a source of the Fund, voluntary contributions from public officers and “private persons”. Reference to private persons may be expanded to include public and private institutions, non-governmental bodies and other bodies corporate.
6.	Regulation 7	The Ministry should consider including the Cabinet Secretary for Health and also consider the gender balance in the appointment of membership to the Board.
7.	Regulation 9	Regulation 9(g) transmit the financial statements to both Auditor General and the National Assembly.
8.	Regulation 14	<p>(i) Regulation 14 requires the Administrator of the Fund to prepare quarterly financial and non-financial reports. It does not clarify to whom the reports should be submitted and by when. This is an accountability issue required under the PFM and Article 201(d) of the Constitution which provides that “financial management shall be responsible, and fiscal reporting shall be clear”.</p> <p>(ii) The Ministry should also consider incorporating the requirement for the Administrator of the Fund to prepare and publish monthly returns in the Daily Newspaper and to file and submit the</p>

	ISSUE	COMMITTEE REMARKS
		monthly returns to the National Assembly for purposes of accountability.
9.	Regulation 17	Regulation 17 provides for winding up of the Fund. The Ministry may consider providing a saving or modality for transition of assets and liabilities of the Fund upon winding up to cushion suppliers and other parties involved.
10.	Consultation / Public participation	<p>The regulation making authority published the Regulations both on their website and the Daily Nation and Standard Newspapers of 31st March, 2020 which are newspapers of wide circulation and gave a deadline of 1st April, 2020 at 5pm for submission of views and memoranda from stakeholders and the public.</p> <p>Given the nature and urgency of the matter in question (COVID-19), the Committee, pursuant to section 13(q) which provides for the latitude of other considerations, was satisfied that the advertisement serves as proof of sufficient consultation and public participation, in case the Ministry provides for and submits to the Committee the reaction of the public on the Regulations.</p> <p>Section 5A (2) of the SI Act contemplates a situation where the regulation-making authority is not able to conduct public participation due to any other reason and hence requires that in an event that they did not conduct public participation, they explain their reasons for not conducting the same in their explanatory memorandum.</p>
11.	Regulatory Statement Impact	The Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are made pursuant to section 24 of Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 which permits the Cabinet Secretary to establish an emergency Fund through Regulations in case of an emergency.

It was resolved that the concerns raised by the Committee be urgently communicated to the regulation making authority for incorporation before publishing of the Regulations.

**MIN.NO. /NA/CDL/2020/067 CONSIDERATION OF VALUE ADDED TAX
(AMENDMENT OF THE RATE OF TAX) ORDER, 2020**

The Committee was informed that the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 is made by the Cabinet Secretary for the National Treasury and Planning in exercise of the powers conferred by section 6(1) of the Value Added Tax Act (No. 25. of 2013, Laws of Kenya.).

Brief background and nature of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020

The Order was issued following the Executive Directive to the Cabinet Secretary to invoke his powers in the Value Added Tax Act to reduce the rate of value added tax on imported goods and services, to ease the tax burden on the public as a relief on the possible individual citizen's economic hardships that may be occasioned by the Coronavirus (COVID 19) pandemic .

Section 5(2) (b) of the Value Added Tax Act (No. 25. of 2013) deals with Charge to tax and provides that –

“The rate of tax ...in any other case shall be sixteen per cent [16%] of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services”.

Section 6(1) of the Value Added Tax Act allows the Cabinet Secretary to amend the rate of tax from 16% which is the rate specified in section 5(2)(b), and if he so amends the rate-

- a) the amendment of the rate must be done through an order published in the Gazette.*
- b) the amended rate of tax can only increase or decrease by an amount not exceeding twenty-five per cent [25%] of the rate specified in section 5(2)(b).*
- c) the order varying the rate must be laid before the National Assembly without unreasonable delay.*
- d) the National Assembly has a maximum of twenty (calendar) days within which to make a resolution approving or not approving the order.*
- e) where the National Assembly passes a resolution disapproving the order within the stipulated time (twenty days of the day on which the National Assembly next sits after the order is laid) the order ceases to have effect but without prejudice to anything previously done thereunder[i.e. any taxes charged at 14% will not be prejudiced and are presumed to be legitimate hence no refunds or claims may be made therefrom]*
- f) where the order is laid in the National Assembly (when the House is in session) and the stipulated time lapses without any resolution from the National Assembly, the order ceases to have effect, implying that the rate of value added tax reverts back to be sixteen percent (16%).*

Observations

- i) The Order is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, hence is subject to the requirements of the Statutory Instruments Act.*

- ii) Being a statutory instrument, it comes into force upon publication in the gazette or on the date specified in the order which for the instant was on the 1st of April, 2020.
- iii) Pursuant to Article 259(5) and (6) of the Constitution, if the Order is laid before the National Assembly on Tuesday, 14th of April, 2020 and with the presumption that the House resumes its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

If the National Assembly approves the Order within the stipulated time, the Order remains in force as published hence the rate of tax shall be 14% until it is varied by another Order made by the Cabinet Secretary.

iv) Resolution approving or not approving the Order to be made by the House (National Assembly) [and not a Committee of the House]

Section 6(2) of the Value Added Tax Act (No. 25. of 2013) contemplates and expressly provides that a resolution approving the Order shall be by the House [and not by a committee of the House]

There are statutory instruments, resolutions of which are subject only to Committee approvals in accordance with Standing Order 210(4)(a) which provides that *"If the committee ... resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department. [The House does not need to ratify the approval]."*

Sections 17, 18 and 19 of the Statutory Instruments Act and Standing Order 210(4)(b) requires the Committee to table a resolution recommending an annulment to the House which the House may or may not adopt. Hence, contrary to SIs which are dealt with in accordance Standing Order 210(4) (a), the VAT Order has to be tabled and the resolution to approve or not approve the variation of the rates has to be arrived at by the House.

Statutory Timelines

- v) The Order was published in the Gazette vide Legal Notice No. 35 of 2020 on the 26th of March, 2020 and was submitted to the Clerk on 1st April, 2020, hence is within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act and was submitted without unreasonable delay in accordance to section 6 (2) of the VAT Act.
- vi) The Order is yet to be tabled before the House as contemplated under sections 28(2) and (3) of the Statutory Instruments Act since the House is on recess. If the Order is laid on the 14th of April, 2020 and on the presumption that the House proceeds with its regular sittings, then the last possible day that the House can make a resolution approving or disapproving the Order is Monday, 4th of May, 2020.

Commencement/ Coming into force of the Order

- vii) The Order came into force on the 1st of April, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.

Consultation / Public participation

- viii) **The Ministry did not demonstrate the conduct of, or the extent to which public participation was conducted.** Section 13(q) of the Statutory Instruments Act gives the

Committee a latitude to consider whether the Statutory Instrument accords to any other reason (other than the ones specified in section 13) that the Committee considers fit to examine.

- ix) Pursuant to section 13(q) of the Act, the Committee took cognizance of the fact that the reduction of the rates is for the benefit of the general public and the nature and urgency of the circumstances created by COVID 19 and dispensed with the requirements of public participation contemplated under sections 5 and the Schedule to the Statutory Instruments Act.

Further, section 5A (2) of the Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

Regulatory Impact Statement

- x) The Order does not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since the reduction of rates is not likely to impose significant costs on the community. The Order on the other hand has the effect of reducing the rate of value added tax chargeable on goods and services from 16% to 14% hence is to the economic advantage of the general public, and may relieve the public from the economic hardships occasioned by the pandemic of COVID 19 in the country.

Way Forward

Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020, the Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (*No 23 of 2013*) pursuant to which is made and therefore resolved to **recommend to the House its approval.**

The approval was proposed by Hon. Patrick Mariru, MP and seconded by Hon. Fatuma Gedi, MP.

In accordance with the section 6(2) of the VAT Act, 2013, the Committee is expected to table a Report on the consideration of the Order for approval by the Whole House. It was therefore resolved that the next meeting be held on Tuesday, 7th April, 2020 at 10.00am to consider and adopt the Report.

MIN.NO. /NA/CDL/2020/067 ANY OTHER BUSINESS

No other business arose.

MIN.NO. /NA/CDL/2020/068 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.05 p.m. until further notice.

Signed:
for Gladys Boss Shollei
HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date: *14.4.20*