



LEGAL NOTICE NO.

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (NATIONAL YOUTH SERVICE COMMERCIAL AND ENTERPRISE FUND) REGULATIONS, 2021

PART I - PRELIMINARY

Citation. **1.** These Regulations may be cited as the Public Finance Management (National Youth Service Commercial and Enterprise Fund) Regulations, 2021.

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

“Accounting Standards Board” has the same meaning assigned to it under section 2 of the Act;

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

“administration costs” means recurrent expenditures of the Fund referred to in regulation 19;

“Administrator of the Fund” means the Director-General of the Service appointed under section 16 of the National Youth Service Act, 2018;

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

“Council” means the Council of the National Youth Service established under section 9 of the National Youth Service Act, 2018;

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

“Former fund” means the National Youth Service Mechanical and Transport Fund established under the repealed Government Financial Management Act, 2004;

"Fund" means the National Youth Service Commercial and Enterprise Fund established under regulation 3; and

“Service” means the National Youth Service established under section 5 of the National Youth Service Act, 2018.

PART II - ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the National Youth Service Commercial and Enterprise Fund.

Capital of the Fund.

4. The initial capital of the Fund shall be two billion five hundred million shillings appropriated by the National Assembly in the financial year 2021/22.

Object and purpose of the Fund.

5. (1) The object and purpose of the Fund shall be to ensure sustainability of commercial and enterprise activities of the Service through —

- (a) commercializing some of the operations of the Service;
- (b) initiating, supporting and facilitating enterprise activities of the Service;
- (c) providing resources for the purchase, maintenance, renewal, and replacement of plant, machinery and equipment of the Service; and,
- (d) supporting any other activities incidental to the sustainability of the Fund.

Guiding Principles.

6. The following principles shall apply in the administration of the Fund —

- (a) transparency, accountability and integrity;
- (b) prudent use of public funds;
- (c) clear and accurate fiscal reporting;
- (d) social responsibility and concern for the environment;
- (e) sustainability and value for money; and
- (f) continuous improvement, adaptability and responsiveness of systems, processes and procedures.

Sources of the Fund.

7. The sources of the Fund shall consist of the following —

- (a) monies appropriated by the National Assembly for the purposes of the Fund;
- (b) income generated from commercial and enterprise activities of the Service;
- (c) monies received as user charges or fees;
- (d) grants, donations and other gifts to the Fund;
- (e) any earnings, accruals or income generated from monies held by the Fund;
- (f) income from disposal of assets of the Fund subject to existing laws and regulations;
- (g) income from investment proceeds of the Fund; and
- (h) money from any other source approved by the Cabinet Secretary.

Utilization of the Fund.

8. (1) The Fund shall be utilized for income generating activities and for the avoidance of doubt, shall include the following commercial and enterprise activities —

- (a) agriculture and value addition;
- (b) services;
- (c) manufacturing;
- (d) processing;
- (e) construction;
- (f) hire of vehicles, plant, machinery, equipment, and facilities;
- (g) training;
- (h) purchase, renewal and maintenance of vehicles, machinery, plant, equipment and other accessories necessary for the proper functioning of the Fund; and
- (i) any other commercial activity within the mandate of the Service.

Payments out of the Fund.

9. (1) There shall be paid out of the Fund, monies in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

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

(3) Any revision of the approved expenditure shall be based on the revised annual work plan, programmes and cost estimates, and approval by the Council.

PART III - ADMINISTRATION AND MANAGEMENT OF THE FUND

Functions of the Council.

10. (1) The functions of the Council under these Regulations shall be to —

- (a) formulate policies to achieve the objects of the fund;
- (b) provide oversight on the administration and management of the Fund;
- (c) approve estimates of revenue and expenditure of the Fund for each financial year;
- (d) approve the opening of bank accounts of the Fund by the Administrator of the Fund;
- (e) develop a strategic plan and operational guidelines for the proper management of the Fund;
- (f) receive, review and approve statutory and management reports of the Fund before submission to third parties;
- (g) oversee the implementation of approved projects and programmes; and
- (h) perform such other duties as may be considered necessary by the Cabinet Secretary responsible for the Service, for the proper administration and management of the Fund and such duty shall be

assigned in writing.

(2) The conduct and regulation of the business and affairs of the Council shall be as provided under section 14 of the National Youth Service Act, 2018.

Administrator of the Fund.

11. (1) The Administrator of the Fund shall be the Director-General of the Service appointed under section 16 of the National Youth Service Act, 2018.

(2) In the absence of the Administrator of the Fund, the Cabinet Secretary, shall pursuant to section 24 (5) of the Act designate an administrator of the Fund in consultation with the Council and the President.

Responsibilities of the Administrator of the Fund.

12. (1) The Administrator of the Fund shall be responsible to the Council in the performance of his or her functions under these Regulations.

(2) Notwithstanding the generality of sub regulation (1), the Administrator of the Fund shall —

- (a) supervise and control the administration of the Fund;
- (b) set and review, with the approval of the Council, any —
 - (i) fees for any service rendered by the Fund;
 - (ii) hire rates for machinery, vehicles, plant and equipment; and
 - (iii) user charges or fees for the use of the facilities of the Fund;
- (c) open, operate, and close, as may be necessary, bank accounts of the Fund with the approval of the Council and the National Treasury;
- (d) put in place internal control systems and a risk management framework to secure the resources of the Fund;
- (e) be the custodian of the assets, equipment and property of the Fund;
- (f) prepare annual financial statements for the Fund for each financial year in a form prescribed by the Accounting Standards Board;
- (g) prepare quarterly financial and non- financial statements in a form prescribed by the Accounting Standards Board;
- (h) prepare, sign and transmit to the Auditor-General, with the approval of the Council, in respect of each financial year and within three months after the end thereof, such statement of accounts relating to the Fund, as the Accounting Standards Board may prescribe;
- (i) prepare and submit an annual performance report of the affairs of the Fund to the Cabinet Secretary for matters relating to the Service, with the approval of the Council;
- (j) cause to be kept proper books of accounts and other books and records in relation to the Fund of all activities and undertakings of the Fund; and
- (k) furnish additional information as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015.

(3) The Administrator of the Fund may delegate any of his or her functions to an officer of the Fund and the delegation shall be in writing.

Secretariat of the Fund.

13. (1) There shall be a Secretariat of the Fund which shall comprise of the Administrator of the Fund and staff of the Fund.

(2) The Council may, subject to the provisions of Article 234 (5) of the

Constitution and any other laws —

- (a) designate the staff or members of the Service to the Secretariat; or
- (b) recruit staff of the Fund through a competitive process.

(3) The Council shall ensure that in the appointment of its staff under this regulation—

- (a) not more than two-thirds of the staff shall be of the same gender;
- (b) the regional and other diversity of the people of Kenya is taken into account; and
- (c) persons with disabilities are afforded adequate and equal opportunities.

Functions of the Secretariat.

14. The Secretariat shall —

- (a) be responsible for the day to day management of the Fund;
- (b) develop predictable, transparent and accountable financial internal control systems for the Fund;
- (c) prepare and submit for approval by the Council estimates of revenue and expenditure, annual work plan, programmes costs estimates, annual procurement plans, and annual cash flow plans;
- (d) implement projects and programmes for the realization of the objectives and purpose of the Fund;
- (e) prepare statutory and management reports and submit them to the Council for approval;
- (f) maintain proper records of the Fund;
- (g) develop investment and contingency plans and submit to the Council for approval;
- (h) monitor and evaluate programmes and projects undertaken by the Fund, and provide reports to the Council;
- (i) implement the decisions of the Council; and
- (j) perform any other duties as may be assigned by the Administrator of the Fund.

Opening, operating and closing of accounts.

15. (1) The Administrator of the Fund shall cause to be opened and operated in the name of the Fund such bank accounts in a bank or banks approved in accordance with section 28 of the Act, as may be necessary for the purpose for which the Fund is established.

(2) The Administrator may recommend to the Council for approval to close any bank accounts of the Fund, where necessary, and seek prior approval of the National Treasury in accordance with section 28 of the Act before closing the bank account.

Bank Accounts not to be overdrawn.

16. The Administrator of the Fund shall ensure that no bank account of the Fund is overdrawn.

Monies to be retained in Fund.

17. (1) All receipts, savings and accruals of the Fund and the balance of the Fund at the close of each financial year, shall be retained for the purpose for which the Fund is established.

(2) Notwithstanding sub-regulation (1), upon declaration of surplus of the Fund at the close of the financial year, the Council with the concurrence of the Cabinet Secretary

for matters relating to the Service with the approval of the Cabinet Secretary may transfer to the Service an amount not exceeding 40% of the surplus for the performance of its functions.

Systems, controls, and procedures.

18. The Administrator of the Fund shall establish systems, controls, and procedures necessary to ensure that —

- (a) the Fund's expenditure is controlled and monitored on an annual basis against the Fund's approved revenue, expenditure plan and the annual work plan ;
- (b) withdrawals from the Fund are only for the purpose of payment of approved expenditure as provided under these Regulations;
- (c) records of expenditure relating to the Fund are kept and maintained in accordance with the provisions of the Act and these Regulations.

Administration costs.

19. (1) The Administrator of the Fund may use a maximum of three percent of the approved budget of the Fund to cover its administrative costs.

(2) Despite the provisions of sub-regulation (1), the Council may recommend a higher amount not exceeding five per cent of the approved budget with the concurrence of the Cabinet Secretary responsible for the Service for approval by the Cabinet Secretary.

Annual estimates of revenue and expenditure

20. (1) At least six months prior to the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for —

- (a) revenues, loans, grants and donations projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) expenditure related to commercial and enterprise activities of the Fund; and
- (c) monies for the administration expenses of the Fund.

(3) The estimates of the revenue and expenditure of the Fund shall be submitted to the Cabinet Secretary responsible for the Service before transmission to the Cabinet Secretary for approval on or before 31st January each year.

Investment of the Fund.

21. (1) The Administrator of the Fund may, with the approval of the Council, invest the funds of the Fund not immediately required for its purposes in such Government securities as the National Treasury may, from time to time, approve.

(2) The Administrator of the Fund may, with the approval of the Council and with the concurrence of the Cabinet Secretary responsible for the Service, and approval of the Cabinet Secretary place on deposit with such bank or banks, any monies not immediately required for the purposes of the Fund.

Proper books of accounts.

22. (1) The Council shall ensure proper books of accounts are kept and the annual statements prepared, which shall include —

- (a) an income and expenditure account;
- (b) a statement of financial position; and
- (c) a statement of cash flows.

(2) The Administrator of the Fund shall ensure that the Fund and the annual financial statements relating to those accounts comply with the prescribed accounting standards.

(3) The Administrator of the Fund shall cause to be prepared quarterly returns and financial statements to be submitted to the Council for approval before submission to the National Treasury with a copy to the Controller of Budget.

Audit of the Fund

23. The Fund shall be audited in accordance with the provisions of the Constitution, the PFM Act, and the Public Audit Act, 2015.

Annual Performance Reports

24. The Administrator of the Fund shall prepare and submit to the Council and the Cabinet Secretary responsible for the Service, within three months of the start of each financial year, an annual Fund Performance Report relating to the previous financial year, detailing the extent to which the Fund met its regulatory, commercial, and enterprise objectives in the period under review.

Application of government financial regulations and procedures

25. Subject to the provisions of the Act, and any other existing relevant legislation, government financial regulations, and procedures, shall apply in the administration of the Fund

PART IV: MISCELLANEOUS PROVISIONS

Annuity of the Fund.

26. (1) The term of this Fund shall be for a period of ten years.

(2) The Cabinet Secretary responsible for the Service or the Cabinet Secretary, may, within the life of the Fund, cause a review of the Fund to determine the effectiveness of the Fund.

Review of the annuity of the Fund,

27. (1) The Cabinet Secretary responsible for the Service shall six months prior to the lapse of the period prescribed in regulation 26 cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act.

(2) Subject to sub-regulation (1) the review shall determine whether the Fund is to be continued, whereupon approval of Cabinet and National Assembly shall be sought.

Offences and penalties.

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

Winding Up of the Fund.

29. (1) The Cabinet Secretary may, subject to the approval of the National Assembly, wind up the Fund where —

- (a) the Cabinet Secretary responsible for the Service determines that the Fund has successfully achieved the objectives for which it was created: or
- (b) the term of the Fund has come to an end.

(2) Notwithstanding the provisions of sub-regulation (1) (a), the Cabinet Secretary may wind up the Fund if —

- (a) the Cabinet Secretary responsible for the Service has made its recommendations supporting such termination;
- (b) the Cabinet has considered and approved the recommendation of the Cabinet Secretary responsible for the Service to wind up the Fund; and
- (c) Cabinet grants approval for such winding up to be moved before the National Assembly.

(3) On the winding up of the Fund —

- (a) the Administrator of the Fund shall disclose the assets and liabilities of the Fund;
- (b) subject to paragraph (a), the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly;
- (d) assets other than cash of the Fund shall be transferred to the Ministry responsible for the Service; and
- (e) the staff shall be redeployed in accordance with the applicable laws and regulations.

(4) The Administrator of the Fund shall prepare and submit the report to the Council for approval before submission to the Auditor-General, a final statement of accounts for audit within three months from the date of the decision to wind up the Fund.

(5) The Auditor General shall prepare an audit report and submit it to the Cabinet Secretary for onward transmission to the National Assembly within seven days from the date of receipt of the audit report.

(6) In case the Cabinet Secretary does not transmit the report to the National Assembly within the seven days, the Auditor General shall submit this report directly to the National Assembly.

Revocation of
L.N 15 of 2011.

30. The Government Financial Management (National Youth Service Mechanical and Transport) Regulations, 2011 are hereby revoked.

Transition of the
former Fund

31. (1) Any debt owed by or to the former Fund shall on the commencement of these Regulations, become a debt owed by or to the National Youth Service

Commercial and Enterprise Fund and the debtor or creditor as the case may be shall have the same rights and obligations.

(2) Any assets other than cash of the National Youth Service Mechanical and Transport Fund shall be vested in the National Youth Service Commercial and Enterprise Fund.

(3) The Administrator of the former Fund shall pay any amount remaining in the former Fund into the National Exchequer Account for the credit of the national government.

Made on the....., 2021.

UKUR YATANI,
Cabinet Secretary,
The National Treasury and Planning.