



SPECIAL ISSUE

323

Kenya Gazette Supplement No. 82

13th June, 2019

(Legislative Supplement No. 25)

LEGAL NOTICE NO. 78

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 (BIASHARA KENYA FUND) REGULATIONS, 2019

1. These Regulations may be cited as the Public Finance Management (Biashara Kenya Fund) Regulations, 2019.

Citation.

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

Interpretation.

“Advisory Board” means the Advisory Board constituted under regulation 8;

“Administrator” means the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose;

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

“Cabinet Secretary” has the same meaning as assigned in section 2 of the Public Finance Management Act, 2012;

“enterprise” means an undertaking or a business concern, whether formal or informal, engaged in the production of goods, provision of services or trade in goods;

“financial intermediary” means a credible commercial bank, microfinance institution, registered non-governmental organisations involved in financing or savings and credit co-operative organisations;

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

“Fund” means the Biashara Kenya Fund established under regulation 3;

“medium enterprise” means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover ranges between ten million and one hundred million shillings;
- (b) which employs between fifty and two hundred and fifty people; and
- (c) whose total assets and financial investments is between fifty million and two hundred and fifty million shillings,

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“micro enterprise” means a firm, trade, service, industry or a registered business—

- (a) whose annual turnover does not exceed two million shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investments does not exceed ten million shillings;

“small enterprise” means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover ranges between two million and ten million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investments is between ten million and fifty million shillings;

“women” means female persons aged eighteen years and above; and

“youth” has the meaning assigned to it under Article 260 of the Constitution.

PART II — ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Biashara Kenya Fund.

Establishment of the Fund.

4. The Fund shall consist of—

Sources of the Fund.

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income-generated from the proceeds of the Fund;
- (c) income from investments made by the Fund;
- (d) grants, donations, bequests or other gifts made to the Fund; and
- (e) monies from any other source approved by the Cabinet Secretary.

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

Expenditure of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of, and limited to, annual budget estimates prepared by the Administrator of, the Fund and recommended by the Advisory Board to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary, at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

6. The initial capital of the Fund shall be two billion shillings appropriated by Parliament in the financial year 2019/20 and additional

Capital of the Fund.

capital of the Fund shall be made in the subsequent financial years' budgets.

7. The object and purpose of the Fund shall be to—

Object and
purpose of the
Fund.

- (a) expand access of finances in promotion of women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for economic growth towards the realization of the goals of Vision 2030;
- (b) provide loans to credible commercial banks, micro-finance institutions, registered non-governmental organizations involved in financing, and savings and credit co-operative organizations for on-lending to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises;
- (c) provide loans directly to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for entrepreneurship development;
- (d) attract and facilitate investment in micro, small and medium enterprises oriented infrastructure such as business, markets or business incubators that will be beneficial to youth, women, persons with disability enterprises or groups and micro, small and medium enterprises;
- (e) support women, youth and persons with disability enterprises or groups and micro, small and medium enterprises to develop linkages with large enterprises;
- (f) facilitate marketing of products and services of youth, women, persons with disability enterprises or groups and micro, small and medium enterprises in both domestic, regional and international markets;
- (g) facilitate mainstreaming of the interests of the women, youth and persons with disability enterprises or groups and micro, small and medium enterprises in bilateral and international trade, investment and agreements;
- (h) support capacity building of the beneficiaries of the Fund and their institutions through training, incubation, mentorship, start-up support and promotion of innovation and development of products;
- (i) facilitate periodic market surveys and data analysis to identify industry opportunities for women, youth, persons with disability enterprises or groups and micro, small and medium enterprises; and
- (j) promote, develop and facilitate access to government procurement opportunities by women, youth and persons with disability enterprises or groups and micro, small and medium enterprises.

PART III — MANAGEMENT OF THE FUND

8. (1) There shall be a Board to be known as the Advisory Board which shall consist of—

Advisory Board.

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary of the National Treasury;

- (c) the Principal Secretary of the State Department for the time being responsible for gender affairs;
- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to youth;
- (e) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and medium enterprises; and
- (f) four other persons, not being public officers, appointed by the Cabinet Secretary for time being responsible for gender affairs.

(2) The members of the Advisory Board referred to in paragraphs (1)(b), (c), (d) and (e) may, in writing, appoint suitable persons to represent them at the meetings of the Advisory Board.

(3) The chairperson and members of the Advisory Board shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

9.(1) A person shall be eligible for appointment as the chairperson of the Advisory Board under regulation 8(1)(a) if that person—

Qualifications of members of the Advisory Board.

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has knowledge and experience of not less than ten years in a relevant field, including—
 - (i) strategic management;
 - (ii) enterprise development;
 - (iii) finance;
 - (iv) law;
 - (v) accounting;
 - (vi) engineering; or
 - (vii) economics;
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Advisory Board under regulation 8(1)(f) if that person—

- (a) has knowledge and relevant experience of not less than five years in relevant fields including enterprise development, capital fund management, financial management, gender and development, youth and development, policy formulation; and
- (b) meets the requirements of Chapter Six of the Constitution.

10. (1) The Advisory Board shall—

Functions of the Advisory Board.

- (a) oversee the administration of the Fund;
- (b) advise the Cabinet Secretary for the time being responsible for gender affairs generally on the operations of the Fund;
- (c) receive reports on the performance of the Fund;
- (d) develop policy guidelines relating to disbursements by the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the Fund priorities and criteria for allocation and disbursement of funds to beneficiaries in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (i) review and approve the financial statements of the Fund before submission to the Auditor General;
- (j) review policy on the management of assets, equipment and all properties under the Fund;
- (k) prescribe other guidelines for use by the Fund;
- (l) mobilize resources for the Fund to be paid into the Fund; and
- (m) undertake any other activity that in the opinion of the Advisory Board, will promote and facilitate realization of the objects and purposes of the Fund.

11. (1) The Administrator of the Fund shall be the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose.

Administrator of
the Fund.

- (2) In administering the Fund, the Administrator shall—
- (a) open and operate a bank account with the approval of the Advisory Board and the National Treasury;
 - (b) supervise and control the administration of the Fund;
 - (c) consult with the Advisory Board on matters relating to the administration of the Fund;
 - (d) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
 - (e) enter into and sign agreements with all successful applicants or financial intermediaries providing affordable and accessible credit to women, youth, persons with disability

enterprises and micro, small and medium enterprises;

- (f) open loan accounts of all successful applicants or financial intermediaries and maintain a record of the amount disbursed and the balance thereof;
- (g) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Public Finance Management Act, 2012 and Public Audit Act, 2015; and
- (h) furnish such additional information as may be considered proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year to which they relate.

12. There shall be a secretariat of the Fund, headed by a Chief Executive Officer, which shall be responsible for the day-to-day running of the affairs of the Fund, and the Chief Officer Executive and staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.

Secretariat and chief executive of the Fund.

13. (1) A woman, youth, person with disability and micro, small and medium enterprise shall be eligible to apply for a loan for business purposes from the Fund if—

Eligibility criteria.

- (a) in the case of a group, is registered with the department of social services, Cooperatives or the Registrar of Societies; and
 - (i) at least seventy percent of the membership is aged between 18 and 35 years;
 - (ii) at least seventy per cent of the membership is composed of women aged eighteen years and above; or
 - (iii) at least seventy per cent of the membership is composed of persons with disability aged eighteen years and above.
- (b) in the case of an enterprise owned by women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act, Partnerships Act, Companies Act or Co-operatives Act;
- (c) in the case of unregistered business, the person shall have a business permit and a P. I. N issued by the Kenya Revenue Authority; or
- (d) in the case of a natural person, the person shall demonstrate

Cap. 499

Cap. 29

No. 17 of 2015

Cap. 490

that he or she is running an enterprise or intends to start an enterprise.

(2) Women, youth and persons with disability enterprises shall be given a preference while processing loans by the Fund.

14. (1) A person who meets the criteria set out in regulation 13 and wishes to borrow a loan from the Fund shall make an application to the Administrator of the Fund in such a manner as may be prescribed by the Advisory Board.

Loan application procedure for direct lending by the Fund.

(2) An application for a loan under sub regulation (1) shall be accompanied by—

- (a) in case of a group—
 - (i) certificate of registration;
 - (ii) minutes of the group's resolution to borrow from the Fund where applicable; and
 - (iii) copies of identification documents of all the group members;
- (b) in the case of an enterprise owned by women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act, Partnerships Act, Companies Act or Co-operatives Act—
 - (i) certificate of registration;
 - (ii) an official search document under the Companies Act, where applicable;
 - (iii) minutes of the resolution to borrow from the Fund where applicable; and
 - (iv) copies of identification documents of all the persons who own the enterprise; or
- (c) in a case of unregistered business—
 - (i) copies of personal identification documents; and
 - (ii) or business permit.
- (d) in case of a person who has demonstrated that he or she is running an enterprise or intends to start an enterprise, a national identification document.

(3) The Administrator of the Fund shall use the following criteria when evaluating a loan application—

- (a) first in first out principle of loan processing;
- (b) give preference to women, youth and persons with disability enterprises;
- (c) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business or projected annual turn-over for start-ups;

- (d) compliance with the provisions of sub regulation (2);
- (e) ability to repay the loan within the stipulated loan tenure;
- (f) an undertaking by the beneficiary that the loan shall only be used for the purpose of the business applied for until the loan is repaid in full by the beneficiary;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund;
- (h) an undertaking by the applicant to notify the Secretariat of the Fund of any change in physical address; and
- (i) any other conditions as may be prescribed by the Advisory Board.

15 (1) Loans from the Fund shall be disbursed to a successful applicant subject to the fulfillment of the following conditions—

Conditions for loan disbursement.

- (a) all loans from the Fund shall be approved and recorded in the minutes of the Secretariat and a report submitted to the next Advisory Board meeting;
- (b) all loans from the Fund shall be advanced to the successful applicants and shall be disbursed through the bank account of the successful applicant, or any other appropriate account approved by the Advisory Board;
- (c) the Administrator of the Fund shall open and maintain loan accounts of all successful applicants and the amount disbursed in each account and the balance thereof; and
- (d) such other additional conditions as the Advisory Board may impose on a particular successful loan applicant.

(3) The Administrator shall enter into an agreement with the successful applicant setting out the terms of the loan and loan repayment prior to release of funds through signing a form prescribed by the Advisory Board.

16. (1) The interest payable on a loan advanced to the persons referred to in regulation 15 shall be at the rate of six per cent per annum on a monthly reducing balance.

Loan interest to applicants.

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

17. The Administrator may use a maximum of three percent of the approved budget of the Fund to cover its administrative costs.

Administration costs.

18. A loan advanced under these Regulations shall be repaid in full within the specified period in the loan agreement.

Loan repayment.

19.(1) The Fund may advance a loan to a financial intermediary for on-lending to the women, youth, persons with disability and micro, small and medium enterprises.

Lending to financial intermediaries for on lending.

(2) A financial intermediary that wishes to access a loan under

paragraph (1) shall apply for the loan and enter into an agreement with the Administrator in the manner prescribed by the Advisory Board.

(3) An application for a loan under paragraph (2) shall be accompanied by –

- (a) a certificate of registration from the relevant regulator;
- (b) a valid license from the relevant regulator;
- (c) an official search document under the Companies Act, where applicable;
- (d) a valid tax compliance certificate;
- (e) a business permit from the relevant county government;
- (f) the minutes of a resolution of the Advisory Board of the financial intermediary to enter into the partnership with the Fund;
- (g) the audited accounts of the financial intermediary for the immediately preceding three years;
- (h) a clean credit reference bureau certificate; and
- (i) any other document as may be prescribed by the Advisory Board

(4) The Administrator of the Fund shall use the following criteria when evaluating a loan application under sub regulation (2) –

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business;
- (c) compliance with the provisions of sub regulation (2);
- (d) ability to repay the loan within the stipulated loan tenor;
- (e) ability to on lend to the women, youth, persons with disability and micro, small and medium enterprises;
- (f) an undertaking by the financial intermediary that the loan shall only be used for the purpose of on-lending to the women, youth, persons with disability and micro, small and medium enterprises;
- (g) no financial intermediary shall be eligible for more than one loan at a time from the Fund;
- (h) an undertaking by the financial intermediary to provide quarterly reports to the Administrator on the beneficiaries of the loan.
- (i) an undertaking by the financial intermediary to permit the Administrator to regularly monitor the use of the loan;
- (j) an undertaking by the financial intermediary to notify the Secretariat of the Fund of any change in physical address; and

(k) such other additional conditions as the Advisory Board may impose.

20. (1) Loans advanced under regulation 19 shall be disbursed subject to the fulfillment of the following conditions—

Conditions for
loan
disbursement.

- (a) the advancement shall be recommended by the Secretariat to the Advisory Board for approval and such approval shall be recorded in the minutes of the Advisory Board;
- (b) loans disbursed from the Fund shall be to the successful financial intermediary and shall be made to the bank account of the successful financial intermediary;
- (c) the administrator of the Fund shall open loan accounts of all successful financial intermediary;
- (d) the signing of a loan agreement by the Administrator with the successful financial intermediary setting out the terms of the loan and loan repayment prior to release of funds upon approval by the Advisory Board; and
- (g) such additional conditions as the Advisory Board may impose on a particular successful financial intermediary.

(2) The Administrator shall not lend more than of twenty-five per cent of the Fund value to the financial intermediaries.

(3) The Administrator shall not advance more than three percent of the Fund value to a financial intermediary.

21. The interest payable on a loan advanced to a financial intermediary from the Fund for on lending purposes shall be three percent per annum on a monthly reducing balance.

Loan interest to
financial
intermediaries.

22.(1) A financial intermediary that is entering into an on lending agreement with the Fund may provide counterpart funding of at least the amount equivalent to the amount advanced by the Fund under regulation 20.

Matching funds
by financial
intermediary

(2) The Advisory Board may vary the interest payable under regulation 21 to a financial intermediary that provides counterpart funding under paragraph (1) to a minimum of one percent.

23.(1) A financial intermediary shall not on-lend funds received under regulations 18, 19 and 22 to any borrower an amount exceeding three million shillings.

On lending by
financial
intermediaries.

(2) The interest payable on a loan on-lent by a financial intermediary to women, youth, persons with disability enterprises and micro, small and medium enterprises shall be at a maximum rate of ten per cent per annum on a monthly reducing balance.

(3) A financial intermediary shall follow such rules governing insider lending as may be provided in relevant regulatory prudential guidelines on insider lending.

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

Investment of
funds.

No. 18 of 2012

25. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Retention of receipts and earnings.

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

Offences and penalties.

27. In the event of winding up of the Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the Government.

Winding up.

Dated the 31st May, 2019.

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