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Public Finance Management Act

The Public Finance Management (Biashara Kenya Fund) Regulations Legal Notice 78 of 2019

Legislation as at 31 December 2022

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PUBLIC FINANCE MANAGEMENT ACT
THE PUBLIC FINANCE MANAGEMENT
(BIASHARA KENYA FUND) REGULATIONS
LEGAL NOTICE 78 OF 2019

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1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires —

"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 (Cap. 412A);

"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,

"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. Establishment of the Fund

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

4. Sources of the Fund

The Fund shall consist of –

- (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. Expenditure of the Fund

- (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.
- (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. Capital of the Fund

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 shall be made in the subsequent financial years' budgets.

7. Object and purpose of the Fund

The object and purpose of the Fund shall be to –

- (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. Advisory Board

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

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

The Advisory Board shall–

- (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. Administrator of the Fund

- (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.
- (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 (Cap. 412A) and Public Audit Act (Cap. 412B); 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 (Cap. 412B).
- (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. Secretariat and chief executive of the Fund

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.

13. Eligibility criteria

- (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 –
 - (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 (Cap. 499), Partnerships Act (Cap. 29), Companies Act (Cap. 486) or Co-operatives Act (Cap. 490);
 - (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 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. Loan application procedure for direct lending by the Fund

- (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.
- (2) An application for a loan under subregulation (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.