

Paper laid by the
Hon. Samuel Chepkoige
Chairperson

Mr Lemwa

29/11/2022.


THIRTEENTH PARLIAMENT- FIRST SESSION (2022)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

(LN. No. 213 of 2022)

 THE NATIONAL ASSEMBLY	
DATE: 29 NOV 2022	
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TABLED BY:	CHAIRPERSON HON. CHEPKONGA
CLERK-AT THE-TABLE:	LEMWA <i>Lemwa</i>

29TH NOVEMBER, 2022

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

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ABBREVIATIONS

LN	Legal Notice
MSMES	Micro, Small, Medium Enterprises
PFM	Public Finance Management
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Public Finance Management (Financial Inclusion Fund) Regulations, 2022, were made by the Cabinet Secretary for the National Treasury and Economic Planning pursuant to Section 24 (4) of the Public Finance Management Act, 2012 and was published in the gazette *vide* Legal Notice No.213 of 2022.

The Regulations were submitted to the Clerk of the National Assembly on 23rd November, 2022 and tabled before the House on 24th November, 2022 hence within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013, and subsequently referred to the Committee on Delegated Legislation for consideration.

The Regulations propose to establish a Financial Inclusion Fund under section 24 of the Public Finance Management Act. This is to ensure innovation, development, and deployment of the bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products by promoting financial inclusion through expanding access to credit by persons in MSMEs, and promoting market interventions to improve supply of affordable credit to micro, small and medium sized enterprises (MSMEs) including creditworthiness based lending, risk pricing, business and financial management skills, and cost of doing business.

To achieve this purpose, the Regulations in particular:

- a) establish the Financial Inclusion Fund;
- b) specify the capital, sources, expenditure, object, and purpose of the Fund;
- c) provide for the governance structure of the Fund, which include an Advisory Board, Chief Executive Officer, who shall be Fund Administrator and Secretariat;
- d) provide for the functions of both the Advisory Board and the Administrator of the Fund;
- e) provide for the eligible persons to benefit from the Fund;
- f) Provide for administration cost of the Fund to be catered for under the normal appropriations by the National Assembly.
- g) provide for Bank account opening, Overdrawn accounts, Withdrawal from Fund and books of account;
- h) provide for the Fund preparation and submission quarterly financial and non-financial reports, annual financial and non-financial reports, investment of the funds, and retention of receipts and earnings;
- i) specify penalties and sanctions for abuse of Financial Inclusion Fund; and
- j) Provide for the procedure of Annuity and winding up of the Fund.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the Regulation making Authority (The National Treasury) to a pre-publication scrutiny meeting on 22nd November 2022 to consider the said Instrument. The Committee observed that the Draft Regulations had not provided for the vacation of office by Board Chairperson, Member and the Chief Executive Officer. Further, the Committee noted that the Draft Regulations had provided for a penalty of Ksh. ten million for a person misappropriating the fund and an applicant who fails to give proper information, which needed separation depending on the

level of the misconduct. The Draft Regulations had not provided for the categories of financial services or products.

The Committee at its scrutiny of the Regulations after publication considered and established that the National Treasury had conformed to the resolutions arrived at during the said joint meeting.

Consultation / Public participation

Articles 10 and 118 of the Constitution requires a mandatory conduct of Public Participation by all regulation making Authorities before publication of a statutory instrument. The National Treasury indicated in the Explanatory memorandum submitted along with the Regulations, that extensive consultations were done while preparing the Regulations, with key stakeholders, extensive consultations were conducted during the preparation of the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 before the finalization of the regulations. The nationwide public consultations on the draft Regulations were organized with all the key stakeholders and their inputs were considered as far as possible before finalization of the Regulations

The key stakeholders who were consulted include Hon. Senators, Hon. Members of the National Assembly, Hon. Governors, Hon. Deputy Governors, CEC members and government officials from MDAs both at national and county level and the relevant development partners. In addition, micro and small enterprises associations; cooperative societies, such as *boda boda*, housing, dairy, cotton, handicraft, coffee, Matatu transport SACCOs, Cooperatives, Unions, Kenya National Chamber of Commerce & Industry Officials, Market Management Committees and County Trade staff, community-based organizations, civil society and faith-based organizations. All the key stakeholders were consulted through physical meetings and submission of memoranda in compliance with the Statutory Instruments Act, 2013.

Having examined the Public Finance Management (Financial Inclusion Fund) Regulations, 2022(LN. No. 213 of 2022) against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), the Public Finance Management Act, 2012 (No. 18 of 2012), the Committee **resolved to recommend to the House to approve in its entirety the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 (L.N. No. 213 of 2022).**

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

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Public Finance Management (Financial Inclusion Fund) Regulations, 2022(LN. No 213 of 2022).**

HON. CHEPKONGA KIPRONO SAMUEL, 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 accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) Accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

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

Ainapko Constituency

UDA

The Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)

Gichugu Constituency

UDA

COMMITTEE MEMBERS

The Hon. Mbui Robert, M.P.
Kathiani Constituency
WDM - Kenya

The Hon. Rai Samwel Gonzi, M.P.
Kinango Constituency
PAA

The Hon. Sunkuli Julius Lekakeny, M.P.
Kilgoris Constituency
KANU

The Hon. Mwirigi John Paul, M.P.
Igembe South Constituency
UDA

The Hon. Kamene Joyce, M.P.
Machakos CWR
WDM -Kenya

The Hon. Odoyo Jared Okello, M.P.
Nyando Constituency
ODM

The Hon. Mwale Nicholas S. Tindi, M.P.
Butere Constituency
ODM

The Hon. Chepkorir Linet, M.P.
Bomet Central Constituency
Jubilee Party

The Hon. Linet Chepkorir, M.P.
Bomet County
UDA

The Hon. Munyoro Joseph Kamau, M.P.
Kigumo Constituency
UDA Party

The Hon. Kipkoech Gideon Kimaiyo, M.P.
Keiyo South Constituency
UDA

The Hon. Ruku Geoffrey Ruku, M.P.
Mbeere North Constituency
DP

The Hon. Komingoi Kibet Kirui, M.P.
Bureti Constituency
UDA

The Hon. Chebor Paul, M.P.
Rongai Constituency
UDA

The Hon. Lenguris Pauline, M.P.
Samburu CWR
UDA

The Hon. Mamwancha Onchoke Charles,
M.P.
Bonchari Constituency
UPA

The Hon. Yakub Adow Kuno, M.P.
Bura Constituency
UPIA

The Hon. Mnyazi Laura Amina, M.P.
Malindi Constituency
ODM

The Hon. Abdullahi Bashir Sheikh, M.P.
Mandera North Constituency
JUBILEE PARTY

The Hon. Mugabe Innocent Maino, M.P.
Lugari Constituency
ODM

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel

Mr. Jacknorine Bulemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Mrs. Sheila Cherobotim
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

Goffrey Khwatemba
Media Relations Officer

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS (L.N. NO. 213 OF 2022)

2.1 Introduction

5. The Public Finance Management (Financial inclusion Fund) Regulations, 2022 are anchored under section 24 of the Public Finance Management Act, 2012 (*No. 18 of 2012*).
6. The Fund provides for affordable financial services and products and is expected to open up affordable credit facilities for the bottom of society and boost the saving culture. It also focuses on capitalization of micro, small and medium enterprises through *chamas*, and cooperatives.
7. The informal sector accounts for more than 80 percent of the workforce and contributes over 33 percent of the Gross Domestic Product. Therefore, the Financial Inclusion Fund, which will be technology-driven will provide convenient and easy to access financial services and product to the sector.
8. The Government will allocate funds through budgetary process for direct lending or on-lending to eligible Micro, Small and Medium Enterprises (MSMEs). The financial products have been designed in such a manner that 95 percent of each loan will be availed to the borrower and 5 percent will be set aside for saving.
9. The Government will provide matching funds for the long-term savings in the ratio of 2:1, that is, for every Kshs. 2 saved, Government will provide Kshs. 1 upto an annual maximum of Kshs. 6,000 per eligible beneficiary.

2.2 Purpose of the Regulations

10. These Regulations propose to establish a Financial Inclusion Fund under section 24 of the Public Finance Management Act. This is to ensure innovation, development, and deployment of the bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products through:
 - (a) promoting financial inclusion through expanding access to credit by persons, proprietors, micro, small and medium enterprises, *chamas*, table banking groups, groups, informal collectives, cooperative societies, associations and start-ups for economic growth and job creation;
 - (b) addressing the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial management knowledge;
 - (c) strengthening the financial and operational capacity of informal sector membership based financial institutions including cooperative societies, *chamas*, table banking groups and micro-finance institutions;
 - (d) promoting market interventions to improve supply of affordable credit to micro, small and medium sized enterprises (MSMEs) including credit worthiness-based lending, risk pricing, business and financial management skills, and cost of doing business;
 - (e) addressing the low participation of the non-formal wage workforce, namely informal economy entrepreneurs and workers, smallholder farmers, pastoralists,

fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and

- (f) providing for government counterpart funding for the savings for borrowers, who shall be natural persons, of the Fund.

11. To achieve this purpose, the Regulations in particular:

- i. establish the Financial Inclusion Fund;
- ii. specify the capital, sources, expenditure, object, and purpose of the Fund;
- iii. provide for the governance structure of the Fund, which include an Advisory Board, Chief Executive Officer, who shall be Fund Administrator and Secretariat;
- iv. provide for the functions of both the Advisory Board and the Administrator of the Fund;
- v. provide for the eligible persons to benefit from the Fund;
- vi. Provide for administration cost of the Fund to be catered for under the normal appropriations by the National Assembly.
- vii. provide for Bank account opening, Overdrawn accounts, Withdrawal from Fund and books of account;
- viii. provide for the Fund preparation and submission quarterly financial and non-financial reports, annual financial and non-financial reports, investment of the funds, and retention of receipts and earnings;
- ix. specify penalties and sanctions for abuse of Financial Inclusion Fund; and
- x. Provide for the procedure of Annuity and winding up of the Fund.

12. The purpose of the Regulations is to establish a dedicated fund pool for meeting Government's payment obligations contracted under project agreements for road development programs in Kenya, especially those implemented under the tolling framework.

13. The Fund shall be operated under the budgeting, accounting, reporting and auditing framework of the Public Finance Management Act, 2012 and the Regulations provide for the way the Fund will be administered and how money will be paid into and out of the Fund, and for the control and administration of the Fund. The Fund, and the Regulations, make it possible for Public Private Partnership toll roads to be implemented in Kenya, as it gives visibility of the toll revenues and certainty in governance practices to investors as a key bankability requirement.

2.3 Legislative Context

14. 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 this section.

15. The National Treasury complied with the provisions of the Constitution and Statutory Instruments Act, 2013 on requirement for public consultations while preparing these Regulations.

16. National Treasury and Ministry of Cooperatives and Micro, Small and Medium Enterprises, sensitized key stakeholders including Parliament and the general public, on the provisions of the Public Finance Management (Financial Inclusion Fund) Regulations, 2022

2.4 Overview of the Regulations

17. The following are the provisions in the Regulations:

Regulation 1 provides for the citation and interpretation of terms

Regulation 2 states the Key terms defined or to be defined, among others, include; “eligible person” a person with low disposable income or a registered micro, small and medium enterprise, a chama, group, table banking group or a cooperative society or an association intending to take a financial product or service or start a business or enhance an existing business;

Regulation 3: Establishes the Fund and designates it as the “*Financial Inclusion Fund*”

Regulation 4: Provides for the sources of the Fund, among them:-

- i. Monies appropriated by the National Assembly for the purposes of the Fund;
- ii. Income-generated from the proceeds of the Fund in form of interest;
- iii. Income from investments made by the Fund;
- iv. Grants, donations, bequests or other gifts made to the Fund; and
- v. Monies from any other source approved by the Cabinet Secretary.

Regulation 5 : Provides for the Expenditure of the Fund to be approved by:

- i. The Advisory Board
- ii. The Cabinet Secretary / Micro, Small and Medium Enterprises
- iii. The Cabinet Secretary / National Treasury & Economic Planning

Regulation 6: Provides for the Capital of the Fund to be appropriated by the National Assembly or any other source provided under Regulation 4.

Regulation 7: Provides for the objects and purpose of the Fund which are to:-

- i. Address the low participation of the non-formal wage workforce, namely, informal sector, entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security.
- ii. Provide for government counterpart funding for the savings for pension component for beneficiaries, who shall be natural persons, of the Fund.

Regulation 8: Provides for delivery of products and services to ensure they are commercially viable, rapidly scalable at reasonable cost and low operational risk without distorting the market.

Regulation 9: Provides for responsibilities of the Cabinet Secretary in charge of Cooperatives and MSMEs which include providing policy guidance, appointing CEO and non-executive members of the Board.

Regulation 10: Establishes the Advisory Board, its composition and its functions.

The Composition is made of:-

- i. A non-executive Chairperson appointed by the President;
- ii. Principal Secretary /the National Treasury;
- iii. Principal Secretary /Micro, Small and Medium enterprises;
- iv. Three non-executive Board Members not being public officers, to be appointed by the Cabinet Secretary / Micro, Small and Medium Enterprises; and
- v. The Chief Executive officer of the Fund, who shall be the Secretary of the Board and an ex-officio member.

Regulation 12: Provides for vacation of office by the Chairperson or a member of the Board

Regulation 13: Provides for functions of the Board which include:-

- i. providing oversight on the administration of the Fund;
- ii. approving policies to facilitate the attainment of the objects and purpose of the Fund which will include developing policies on financial services and products; savings by eligible persons, who shall be natural persons of the Fund; operationalization of the Fund; online application procedure, credit scoring, approval, disbursement and repayment of loans; development of loan management systems and solutions which among others will include database of loan beneficiaries, loans disbursed, amounts recovered and balances;
- iii. determining additional disbursement conditions as the Board may consider necessary.

Regulation 14: Establishes the office of the Chief Executive Officer to be competitively recruited by the Board and appointed by the Cabinet Secretary/Cooperatives &MSMEs. CEO shall be responsible for day-to-day running of the Fund.

Regulation 15: provides for vacation of office by the Chief Executive Officer.

Regulation 16: Provides for the Staff of the Secretariat of the Fund, headed by the CEO, who shall be recruited by the Board or officers seconded from Public Service to the Fund

Regulation 17(1): Provides for designation of the Chief Executive Officer to be the Administrator of the Fund

Regulation 17(2): Provides for the functions of the administrator of the Fund, which key among them, are:-

- i. Open and operate such bank accounts with the approval of the Board and the National Treasury.
- ii. Supervise and control the day-to-day administration of the Fund.
- iii. In consultation with the Board, develop such policies as may be necessary for the attainment of the objects of the Fund and submit them to the Board for approval.
- iv. Consult with the Board on matters relating to the administration of the Fund

Regulation 18: Provides for categories of financial services and products of the Fund, including:

- i. Loans;
- ii. Retirement Benefits;
- iii. Health Insurance benefits; and
- iv. Savings.

Regulation 19: Provides for eligibility conditions for products, with the following categories

- i. A natural person shall qualify if he/she-
 - Is eighteen years of age and above;
 - Is a holder of a Kenyan national identification card; and
 - Fulfils any other conditions as maybe determined by the Board.
- ii. A micro, small and medium enterprise, cooperative society, *chama*, group, table banking group or any other association, shall qualify if that applicant
 - Has all members who are eighteen years of age and above;
 - Is registered by the relevant government institution; and
 - Meets any other conditions as may be determined by the Board.

Regulation 20: Provides for Lending to financial intermediaries for on-lending to MSMEs.

Regulation 21 (1) : Provides for Matching funds by financial intermediary of at least the amount as may be determined by the Board.

Regulation 21 (2) : Provides for payment of interest as may be determined by the Board, provided that where the financial intermediary provides marching funds under paragraph (1), the interest rate shall be lower compared to where no marching funds are provided.

Regulation 22: Provides for the rate of interest or administrative fee payable by a beneficiary on a financial service or product advanced under these Regulations shall be at a maximum rate of eight percent per annum on reducing balance provided that where a beneficiary defaults, the interest or administrative fee payable shall be one and one half per centum per annum on a reducing balance.

Regulation 23: Provides for the repayment of all financial products advanced by the Fund in full within the period determined in the agreement. The Regulation also provides that all sums due to the Fund shall be recoverable as a debt due to the Fund.

Regulation 24: Provides for opening of the Fund’s main bank account at the Central Bank of Kenya

Regulation 25: Provides for the administration costs for running the Fund to be appropriated by the National Assembly.

Regulation 26: Provides for the application of existing government financial and procurement regulations to the extent they relate to the administration of public funds in administering this Fund.

Regulation 27: Provides that Investment of funds of the Fund should only be restricted to Government securities.

Regulation 28: Provides for Retention of receipts and earnings of the Fund.

Regulation 29: Provides for external audit of the Fund by the Auditor General in line with Public Finance Management Act and Public Audit Act, including statutory timelines.

Regulation 30(1) : Provides for penalties and offences relating to a public officers who:-

- i. Takes possession of public funds or assets of the Fund without lawful authority;
- ii. Misappropriate funds or assets of the Fund;
- iii. Causes any person to misappropriate or apply the Funds otherwise than in the manner provided in these Regulations;

- iv. Conceals information on finances of the Fund to obtain a financial benefit either for the officer or another person; or
- v. Engages in a corrupt act,

Such conduct amounts to an offense and a public officer committing the offense shall be liable to the penalty provided for under section 199 of the Public Finance Management Act, 2012

Regulations 30(2): Provides for penalties and offences relating to an applicant or an agent of the Fund who fails to give information required or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations.

That applicant or agent commits an offense and shall be liable to the penalty provided for under section 199 of the PFM Act.

Regulation 31: Provides for protection from liability for the chairperson or any member of the Board or any officer, employee or agent of the Fund for matters or things done in good faith.

Regulation 32: Provides for manner in which to wind up the Fund.

2.5 Scrutiny of the Instrument

18. In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held pre-publication consultations with the regulation making authority, being the National Treasury & Planning on Tuesday 22nd November, 2022 in Machakos County and observed that the establishment of the Fund would enhance financial inclusion especially for those at the bottom of the pyramid in the MSMEs resulting to a positive impact to the economy.

19. The Committee further considered the Public Finance Management (Financial inclusion Fund) Regulations, 2022 to check its conformity with the Constitution, the Public Finance Management Act of 2012, the Statutory Instruments Act, 2013 (No. 23 of 2013) to which was found to be in the affirmative.

2.6 Justification for the Fund:

20. The following reasons motivate the establishment of the Fund: -

- 1) promoting financial inclusion through expanding access to credit by persons, proprietors, micro, small and medium enterprises, *chamas*, table banking groups, groups, informal collectives, cooperative societies, associations and start-ups for economic growth and job creation;
- 2) addressing the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial management knowledge;
- 3) strengthening the financial and operational capacity of informal sector membership based financial institutions including cooperative societies, *chamas*, table banking groups and micro-finance institutions;

- 4) promoting market interventions to improve supply of affordable credit to micro, small and medium sized enterprises (MSMEs) including creditworthiness based lending, risk pricing, business and financial management skills, and cost of doing business;
- 5) addressing the low participation of the non-formal wage workforce, namely informal economy entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and
- 6) providing for government counterpart funding for the savings for borrowers, who shall be natural persons, of the Fund.

3.0 COMMITTEE OBSERVATIONS

21. Having examined the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 in accordance with the Constitution of Kenya, the Public Finance Act (No 18 of 2012), and the Statutory Instruments Act (No 23 of 2013) the Committee made the following observations –

3.1 Statutory Timelines

22. THAT, the Regulations were published in the gazette on 23rd November, 2022, *vide* Legal Notice No 213 of 2023, submitted to the Clerk, National Assembly on Thursday 24th November, 2022 and laid in the House on 24th November, 2022 being within the statutory timelines set out in section 11(1) of the Statutory Instruments Act, 2013.

3.2 Public Participation

23. THAT, Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

24. During consultations with the regulation making authority, the National Treasury & Planning demonstrated through a schedule in the explanatory memorandum that they conducted public participation as listed hereunder – THAT -

- a. On Saturday, 12th November, 2022, notices inviting submissions of memoranda by way of public participation by 18th November, 2022, were published in both the Nation and Standard Newspapers.
- b. Public consultations on the proposed Public Finance Management (Financial Inclusion Fund) were conducted from 14th to 16th November, 2022 in various parts of the country including; KISUMU, NAKURU, MERU, ELDORET, NYERI, KISII, KITUI, NAIROBI among others.

3.3 Regulatory Impact Statement

25. The proposed Regulations provides the basis for effective and structured way of ensuring innovation, development, and deployment of the bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products which will guarantee sustainability of the Fund.

26. The establishment of the Financial Inclusion Fund will have a net impact of the proposed regulatory rule positive on practice in enhancing financial inclusion. These regulations envisage financial products that shall not remain a preserve of the formally employed but every willing Kenyan at the bottom of the pyramid has an opportunity to be part of the financial services and products offered by the Fund. In addition, the regulations have provided management of the Fund with flexibility to design and implement appropriate financial services and products while leveraging on appropriate technology and financial systems.

27. The proposed Regulations provides the basis for effective and structured way of ensuring innovation, development, and deployment of the bottom of the pyramid financial services

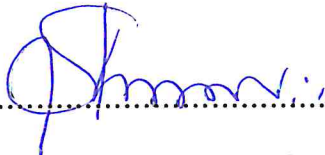
and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products which will guarantee sustainability of the Fund.

28. The establishment of the Financial Inclusion Fund will have a net positive impact in enhancing financial inclusion. These regulations envisage financial products that shall not remain a preserve of the formally employed but will ensure that every willing Kenyan at the bottom of the pyramid has an opportunity to be part of the financial services and products offered by the Fund. In addition, the regulations have provided management of the Fund with flexibility to design and implement appropriate financial services and products while leveraging on appropriate technology and financial systems.

4.0 COMMITTEE RECOMMENDATION

29. Having examined the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 in accordance with the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Public Finance Act, **the Committee recommends that the House approves the Public Finance Management (Financial Inclusion Fund) Regulations (LN. No. 213 of 2022), in accordance with section 24(4) the Public Finance Management Act (No. 18 of 2012).**

Signed.....



Date.....



**THE HON. CHEPKONGA SAMUEL KIPRONO CBS, MP
(CHAIRPERSON)**

ANNEXURES

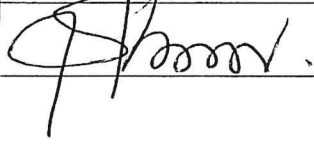

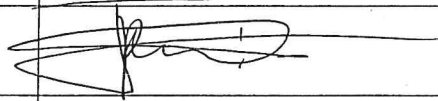
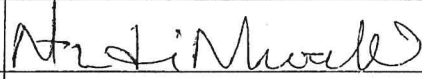
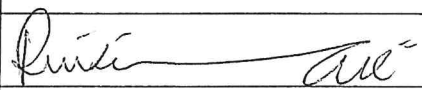

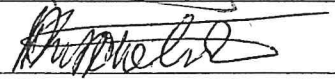
- 1. Adoption List**
- 2. Legal Notice Number 222 of 2021 and the Explanatory Memorandum**
- 3. Committee Minutes**

COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 29.11.2022 VENUE: Small Dining New wing STARTING TIME: 10:15 AM

ENDING TIME: 11:00 AM

AGENDA: Adoption of Public Finance (Financial Inclusion) Regulations 2022

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

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

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

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

PRESENT

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

APOLOGIES

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

IN ATTENDANCE

THE NATIONAL ASSEMBLY.

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

AGENDA

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

MIN. DAA&OSC/CDL/046/2022

PRELIMINARIES

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

MIN. DAA&OSC/CDL/047/2022

ADOPTION OF THE AGENDA

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

MIN. DAA&OSC/CDL/048/2022

CONFIRMATION OF MINUTES

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

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

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

MIN. DAA&OSC/CDL/049/2022

MATTERS ARISING

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

MIN. DAA&OSC/CDL/050/2022

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

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

MIN. DAA&OSC/CDL/051/2022

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

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

MIN. DAA&OSC/CDL/052/2022

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

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

MIN. DAA&OSC/CDL/053/2022

ADJOURNMENT.

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

SIGNED:

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

DATE:

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

PRESENT

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

APOLOGIES

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

IN ATTENDANCE

THE NATIONAL ASSEMBLY.

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

NATIONAL TRASURY AND ECONOMIC PLANNING

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

KENYA REVENUE AUTHORITY

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

AGENDA

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

MIN. DAA&OSC/CDL/038/2022

PRELIMINARIES

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

MIN. DAA&OSC/CDL/039/2022

ADOPTION OF THE AGENDA

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

MIN. DAA&OSC/CDL/040/2022

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

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

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

MIN. DAA&OSC/CDL/041/2022

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

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

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

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

- i) Head of the Directorate or a Department, who shall be the chairperson;
 - ii) One Officer from the Finance Department;
 - iii) A maximum of four members appointed on ad hoc basis on their technical knowledge and depending on the project being implemented;
 - iv) One member from any department of a County Government Departments and agencies; and
 - v) The head of planning or his or her representative, who shall be the secretariat.
- h) Regulation 16:** Provides for the functions of the project committees. This comprises as follows:-
- i) To review project concept notes and make recommendations to the accounting officer for decision making within thirty days;
 - ii) To review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision making within thirty days;
 - iii) To identify potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;
 - iv) To prioritize projects based on the National Government Ministries, Departments and agencies or County Government Departments and Agencies strategic Plan, Medium Term Plan, and National and County development plans;
 - v) To recommend the mode of project financing
 - vi) Ensure projects are aligned to the National development Plans.
- i) Regulation 22 - 23:** provides for the implementation, monitoring, evaluation and reporting mechanism.
- j) Regulation 24 - 26:** provides for the project closure, sustainability and ex-post evaluation
- k) Regulation 29:** provides for the Public Investment Management Information System. The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System. The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.
- l) The scope of these Regulations shall apply to:**
- a) National and County Governments and their entities, including Commissions, independent offices, and state organs when planning and Implementing Public Investments.
 - b) Public Investment projects whether wholly or partially funded through public Finances irrespective of source
 - c) Projects considered for implementation through Public Private Partnership arrangements , in so far as the Regulations are not in Contradiction with the provisions of the Public Private Partnership Act, 2021

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

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

MIN. DAA&OSC/CDL/042/2022

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

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

1. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 176/2022)** was published in the Gazette on 3rd October, 2022, and received by the Clerk of National Assembly on 14th October, 2022 and was tabled before the House on 1st November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 176/2022)** were made by KRA to;
 - i. Provide for adjustments for inflation and part I of the First Schedule of the Excise Duty Act on Rates of Excise Duty.
 - ii. The specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
 - iii. It was further noted that the approval of the Regulations would lead to a generation of Ksh. 5.2 Billion from the goods whose excise duty rates were adjusted for inflation excluding petroleum products, liquid nicotine for electronic cigar rates and imported ready to use SIM cards which were made excisable through the Finance Act 2022.
3. KRA submitted a revised Regulations 176 of 2022 to correct typographical error in item 1 as 'Grape must' and item 12 as 'imported sugar confectionary of tariff' through a letter Ref: KRA/5/1002/5(8153) and republished as Legal Notice No. 204 of 2022.
4. Upon deliberation on the aforementioned Regulations, the Committee **Approved** to them as published in the gazette.

ADJUSTMENT OF RATES OF
EXPORT LEVY FOR
INFLATION REGULATIONS,
2022) (LEGAL NOTICE 177 OF
2022)

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

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

MIN. DAA&OSC/CDL/044/2022

ANY OTHER BUSINESS.

The following matters were raised under this agenda item:

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

MIN. DAA&OSC/CDL/045/2022

ADJOURNMENT.

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

SIGNED: 

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

DATE: 29th November, 2022

LEGAL NOTICE NO. 213

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 Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

1. These Regulations may be cited as the Public Finance Management (Financial Inclusion Fund) Regulations, 2022. Citation.
2. In these Regulations, unless the context otherwise requires—
“Act” means the Public Finance Management Act, 2012; Interpretation.
No. 18 of 2012.
“Administrator of the Fund” means a person designated as such under regulation 17(1);
“association” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012; No. 55 of 2012.
“Board” means the Advisory Board established under regulation 10 (1) of these Regulations;
“borrower” means a person in receipt of a financial service or product advanced to that person by the Fund;
“bottom of the pyramid” means a socio-economic group of persons with low disposable income;
“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;
“*chama*” means a registered group of persons pursuing common objectives by pooling resources together to empower one another economically;
“cooperative society” has the meaning assigned to it under section 2 of the Cooperative Societies Act, 1997; No. 12 of 1997.
“credit scoring” means a statistical analysis performed by the Fund or an agent or a financial intermediary to determine the creditworthiness of an applicant to qualify for subsequent and enhanced financial service or product under this Fund;
“eligible person” means a person with low disposable income or a registered micro, small and medium enterprise, a *chama*, group, table banking group, a cooperative society or an association intending to take

a financial product or service to start a business or enhance an existing business;

“enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012;

“financial intermediary” means a micro-finance institution, a cooperative society, a *chama*, a group or an association that holds funds from the Fund for on-lending;

“financial product” means a financial instrument including a loan which may be advanced by the Fund to an eligible person under these Regulations;

“financial service” includes health insurance, retirement benefit scheme, universal health coverage and universal social security which may be offered by the Fund to an eligible person under these Regulations;

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

“Fund” means the Financial Inclusion Fund established under regulation 3;

“group” means a registered self-help group with a common interest or whose aim is to organize itself to work together or act together to achieve an economic objective;

“medium enterprise” has the meaning assigned to it under section 2 of the Act;

“micro enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012;

“on-lending” means lending of a financial service or product by a financial intermediary to a member or a third party on conditions determined by the Board;

“small enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act, 2012; and

“table banking” means a group-based funding system where members of a group make periodic monetary contributions to form a kitty from which members may borrow.

PART II — ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Financial Inclusion Fund.

Establishment of the Fund.

4. The Fund shall consist of—

Sources of the Fund.

- (a) monies appropriated by the National Assembly for the purposes of the Fund;
- (b) income generated from the proceeds of the Fund in form of interest and other charges such as penalties;
- (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 limited to annual budget estimates prepared by the Administrator of the Fund and recommended by the Board to the Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) for approval and submission to the Cabinet Secretary for further approval, at the beginning of the financial year to which they relate.

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

6. The capital of the Fund shall be as appropriated by the National Assembly or from any other source provided for under regulation 4 of these Regulations.

Capital of the Fund.

7. (1) The object and purpose of the Fund shall be to innovate, develop and deploy bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and under-served persons, including credit, saving, insurance and investment products.

Object and purpose of the Fund.

(2) Without prejudice to the generality of paragraph (1), the objects and purpose of the Fund shall be to—

- (a) promote financial inclusion through expanding access to credit by persons, micro, small and medium enterprises, *chamas*, table banking groups, groups, cooperative societies, associations and start-ups for economic growth and job creation;
- (b) address the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial literacy;
- (c) strengthen the financial and operational capacity of informal sector membership based financial institutions including cooperative societies, *chamas*, table banking groups and micro-finance institutions;
- (d) promote market interventions to improve supply of affordable credit to Micro, Small and Medium sized Enterprises (MSMEs) including creditworthiness based lending, risk pricing, business and financial management skills, and cost of doing business;
- (e) address the low participation of the non-formal wage workforce, namely informal sector entrepreneurs and

workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and

- (f) provide for government counterpart funding for the savings for pension component for beneficiaries, who shall be natural persons, of the Fund.

8. (1) The Fund shall ensure that its products and services are commercially viable, rapidly scalable at reasonable cost and low operational risk without distorting the market.

Delivery of
Products and
Services.

(2) In facilitating the provision under paragraph (1), the Fund shall leverage on existing commercial infrastructure, including mobile payments platforms and financial institutions, including agency, co-financing and on-lending partnerships:

Provided that such partnerships are not exclusive or preferential, are technology neutral and do not confer market advantage to any partners over competitors.

9. The Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) shall be responsible for—

Role of the
Cabinet Secretary
in charge of
MSMEs.

- (a) providing overall policy direction in implementation of the Fund;
- (b) appointment of members of the Board under regulation 10(1)(e);
- (c) appointment of the Chief Executive Officer under regulation 14(1);
- (d) providing regular briefs to the Cabinet on the status of implementation of the Fund;
- (e) approval of the estimates of expenditure and revenue before submission to the Cabinet Secretary;
- (f) receipt of quarterly and annual financial and non-financial reports of the Fund; and
- (g) receipt of any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

PART III — MANAGEMENT OF THE FUND

10. (1) There is established 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 to the National Treasury or his representative, designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and

medium enterprises or his representative, designated in writing;

- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to cooperatives or his representative, designated in writing;
- (e) three other persons, not being public officers, who shall be appointed by the Cabinet Secretary for the time being responsible for matters relating to micro, small and medium enterprises; and
- (f) the Administrator of the Fund, who shall be the Secretary of the Board and an *ex-officio* member.

(2) The Board may invite any person to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter but such a person shall have no right to vote at the meeting.

(3) The Chairperson and members of the Board appointed under paragraph (1)(a) and (1)(e) respectively 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.

(4) The quorum necessary for transaction of the business of the Board shall be a simple majority of the members.

(5) The conduct and regulation of the business and affairs of the Board shall be determined by the Board.

11. (1) A person shall be eligible for appointment as the Chairperson of the Board under paragraph 10(1)(a) if that person—

Qualifications of members of the Board.

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has leadership and management experience of not less than ten years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) economics;
 - (iv) law;
 - (v) enterprise development;
 - (vi) cooperative management;
 - (vii) information, communication and technology;
 - (viii) business and management; or
 - (ix) strategic management.
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Board under paragraph 10(1)(e) if that person—

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has leadership and management experience of not less than five years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) Economics;
 - (iv) enterprise development;
 - (v) cooperatives management;
 - (vi) information, communication and technology;
 - (vii) business and management;
 - (viii) law; or
 - (ix) strategic management; and
- (c) meets the requirements of Chapter Six of the Constitution.

12. The Chairperson or a member of the Board appointed under regulation 10(1) (a) and (c) shall cease to hold office if—

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) absent from three consecutive meetings of the Board without permission from the appointing authority;
 - (ii) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) convicted of an offense involving dishonesty or fraud;
 - (iv) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (v) incapacitated by prolonged physical or mental illness;
 - (vi) otherwise unable or unfit to discharge his duties; or
- (c) he dies.

Vacation of office by Chairperson or a member of the Board.

13. The Board shall—

- (a) provide oversight on the administration of the Fund;
- (b) approve operational policies to facilitate the attainment of the objects and purpose of the Fund;
- (c) determine additional disbursement conditions as the Board may consider necessary;

Functions of the Board.

- (d) participate in the formulation of operational policy, regulation and programmes of the Fund to address systemic financial market failure and malpractices including predatory lending and pyramid schemes;
- (e) develop operational policies to guide on—
 - (i) savings for borrowers, who shall be natural persons, of the Fund;
 - (ii) financial services and products under regulation 18 of these Regulations to operationalize the Fund;
 - (iii) the eligibility criteria, online application procedure, credit scoring, approval, disbursement and repayment of loans;
 - (iv) the development of loan management systems and solutions which among others will include database of loan beneficiaries, loans disbursed, amounts recovered and balances;
 - (v) capacity building in respect of eligible persons of the Fund; and
 - (vi) access and conduct of financial intermediaries;
- (f) review and approve the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for micro, small and medium enterprises for approval and submission to the Cabinet Secretary for approval;
- (g) set the criteria and conditions for accessing the various financial services including the rate of interest or administrative fee and recovery of financial services or products; in furtherance of the objects and purpose of the Fund;
- (h) monitor and evaluate the implementation and performance of the Fund;
- (i) promote access to the services of the Fund to all Kenyans in all parts of the Republic;
- (j) review and approve the financial statements of the Fund before submission to the Auditor General;
- (k) review and approve operational policy on the management of assets, equipment and all properties under the Fund;
- (l) mobilize resources for the Fund;
- (m) approve the opening and closing of bank accounts of the Fund by the Administrator of the Fund;
- (n) advise the Cabinet Secretary for the time being responsible for micro, small and medium enterprises generally on the operations of the Fund;

- (o) determine the allocation criteria that will ensure equitable distribution of financial products across the country, including the target number of eligible persons to be advanced loans in any one particular year; and
- (p) undertake any other activity that in the opinion of the Board, will promote and facilitate realization of the objects and purpose of the Fund.

14. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

Chief Executive
Officer of the
Fund.

(2) The Board shall recommend three persons from whom one shall be appointed under paragraph (1).

(3) Where a substantive Chief Executive Officer has not been appointed, the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall appoint a public officer to act as the Chief Executive officer.

(4) A person shall not be appointed as Chief Executive officer, unless that person—

- (a) holds a degree in either economics, accounting, finance or any other relevant degree from a recognized institution;
- (b) has ten years of work experience of which five years shall be in senior management level in a relevant field; and
- (c) meets the requirement of Chapter Six of the Constitution.

(5) A person appointed as a Chief Executive Officer shall hold office—

- (a) for a term of four years subject to renewal for a further one term of four years; and
- (b) on such terms and conditions as may be determined by the Cabinet Secretary responsible for matters relating to micro, small and medium enterprises in consultation with the Cabinet Secretary and the Salaries and Remuneration Commission.

15. The Chief Executive Officer of the Fund shall cease to hold office if—

Vacation of office
by Chief
Executive Officer.

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (ii) convicted of an offense involving dishonesty or fraud;
 - (iii) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

- (iv) incapacitated by prolonged physical or mental illness;
- (v) otherwise unable or unfit to discharge his duties; or
- (c) he dies.

16. (1) There shall be a secretariat of the Fund headed by the Chief Executive Officer.

Secretariat of the Fund.

(2) The staff of the secretariat shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

(3) Where the Secretariat has not been constituted as envisaged under paragraph (1), the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall second public officers to perform the duties of the Secretariat.

17. (1) The Administrator of the Fund shall be the Chief Executive Officer appointed under regulation 14(1).

Administrator of the Fund.

(2) In administering the Fund, the Administrator of the Fund shall—

- (a) open and operate such bank accounts with the approval of the Board and the National Treasury;
- (b) supervise and control the day-to-day administration of the Fund;
- (c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects and purpose of the Fund;
- (d) consult with the Board on matters relating to the administration of the Fund;
- (e) 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;
- (f) with the approval of the Board, outsource services and enter into and sign commercial contracts or agreements in furtherance of the objects and purpose of the Fund;
- (g) be the custodian of the assets and properties of the Fund;
- (h) open loan accounts of all successful applicants or financial intermediaries and maintain a record of the amount disbursed and the balance thereof;
- (i) 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 Act and Public Audit Act, 2015;
- (j) prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector

No. 34 of 2015.

Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and

- (k) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

18. (1) The financial services or products of the Fund shall include the following—

Categories of financial services or products.

- (a) loans;
- (b) retirement benefits;
- (c) health insurance benefits; and
- (d) savings.

(2) The Fund shall leverage on credit scoring model to determine the creditworthiness of an eligible person to qualify for subsequent and enhanced financial services or products.

19. Further to the eligibility criteria set in these Regulations, an eligible person may qualify for a financial product or service under these Regulations —

Eligibility conditions.

- (a) where an applicant is a natural person, if that person—
 - (i) is eighteen years of age and above; and
 - (ii) is a holder of a Kenyan national identification card.
- (b) where an applicant is a micro, small and medium enterprise, a cooperative society, *chama*, a group, a table banking group or any other association, if that applicant—
 - (i) has all members who are eighteen years of age and above; and
 - (ii) is registered by the relevant government institution.

20. A financial intermediary may apply and enter into a lending agreement for a loan from the Fund for on-lending to a business person or micro, small and medium enterprises.

Lending to financial intermediary for on lending.

21. (1) Where a financial intermediary enters into a lending agreement with the Fund under regulation 20, that financial intermediary may provide matching funds of at least the amount that may be determined by the Board.

Matching funds by financial intermediary.

(2) A financial intermediary shall pay an interest or administrative fee as may be determined by the Board, but where the financial intermediary provides matching funds under paragraph (1), the interest or administrative fee shall be lower compared to where no matching funds are provided.

22. The interest or administrative fee payable by a beneficiary on a financial service or product advanced under these Regulations shall be at a maximum rate of eight per centum per annum on reducing balance:

Interest or administrative fee on financial services or products.

Provided that where a beneficiary defaults, the interest or administrative fee payable shall be nine and one half per centum on a reducing balance.

23. (1) A financial product or service advanced under these Regulations shall be repaid in full within the period determined in the agreement.

Repayment.

(2) All sums due to the Fund shall be recoverable as a debt due to the Fund.

24. (1) The Administrator of the Fund shall open the main bank account at the Central Bank of Kenya.

Bank accounts for the Fund.

(2) The Administrator may open such other bank accounts in the Central Bank of Kenya or commercial banks including trust accounts, or pension saving accounts with the approval of the Board and the National Treasury to further the objects and purpose of this Fund.

25. The Administrative costs of the Fund shall be met through appropriations of the State Department responsible for matters relating to Micro, Small and Medium Enterprises.

Administration costs.

26. The existing government financial and procurement Regulations shall, to the extent they relate to the administration of public funds established under the Act, apply in the administration of the Fund.

Government financial Regulations.

27. The Administrator of the Fund may invest any of the funds of the Fund which are not immediately required for its purposes in such government securities as may be approved by the Board under these Regulations.

Investment of funds.

28. 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.

29. (1) The Administrator of the Fund shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the Administrator of the Fund shall submit to the Auditor General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

30. (1) A public officer who—

- (a) takes possession of the funds or assets of the Fund without lawful authority;

Offences and penalties.

- (b) misappropriates funds or assets of the Fund;
- (c) causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations;
- (d) conceals information on finances of the Fund to obtain a financial benefit either for the officer or another person; or
- (e) engages in a corrupt act,

that public officer commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

(2) An applicant or an agent of the Fund who fails to give proper information or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations to obtain a financial benefit, either for himself or herself or for another person, that applicant or agent commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

31. No matter or thing done by the Chairperson or any member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of these Regulations, render the chairperson, member, officer, employee or agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

32. 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 National Treasury.

Winding up.

Made on the 23rd November, 2022.

NJUGUNA NDUNG'U,
*Cabinet Secretary for the National
Treasury and Economic Planning.*

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

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I. The Purpose of Public Finance Management (Financial Inclusion Fund) Regulations, 2022.

1. These Regulations propose to establish Financial Inclusion Fund under section 24 of the Public Finance Management Act. This is to ensure innovation, development and deployment of the bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products through:
 - (a) promoting financial inclusion through expanding access to credit by persons, proprietors, micro, small and medium enterprises, *chamas*, table banking groups, groups, SACCO societies, associations and start-ups for economic growth and job creation;
 - (b) addressing the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial literacy;
 - (c) strengthening the financial and operational capacity of informal sector membership based financial institutions including SACCO societies, *Chamas*, table banking groups, banks and micro-finance institutions;
 - (d) promoting market interventions to improve supply of affordable credit to micro, small and medium sized enterprises (MSMEs) including credit-worthiness based lending, risk pricing, business and financial management skills, and cost of doing business;
 - (e) addressing the low participation of the non-formal wage workforce, namely informal economy entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and
 - (f) providing for government counterpart funding for the savings for borrowers, who shall be natural persons, of the Fund.

2. To achieve this purpose, the Regulations in particular:
 - a) establish the Financial Inclusion Fund;
 - b) specify the capital, sources, expenditure, object, and purpose of the Fund;
 - c) provide for the governance structure of the Fund, which include an Advisory Board, Chief Executive Officer, who shall be Fund Administrator and Secretariat;
 - d) provide for the functions of both the Advisory Board and the Administrator of the Fund;
 - e) provide for the eligible persons to benefit from the Fund;
 - f) Provide for administration cost of the Fund to be catered for under the normal appropriations by the National Assembly.
 - g) provide for Bank account opening, Overdrawn accounts, Withdrawal from Fund and books of account;
 - h) provide for the Fund preparation and submission quarterly financial and non-financial reports, annual financial and non-financial reports, investment of the funds, and retention of receipts and earnings;
 - i) specify penalties and sanctions for abuse of Financial Inclusion Fund; and
 - j) Provide for the procedure of Annuity and winding up of the Fund.

II. **The Legislative Context:**

3. 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 this section.
4. The National Treasury complied with the provisions of the Constitution and Statutory Instruments Act, 2013 on requirement for public consultations while preparing these Regulations.

III. **Public Consultations**

5. Extensive consultations were conducted during the preparation of the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 before the finalization of the regulations. The nationwide public consultations on the draft Regulations were organized with all the key stakeholders and their input taken into account as far as possible before finalization of these Regulations
6. The key stakeholders who were consulted include Hon. Senators, Hon. Members of Parliament, Hon. Governors, Hon. Deputy Governors, CEC members and

government officials from MDAs both at national and county level and the relevant development partners. In addition, micro and small enterprises associations; cooperative societies, such as boda boda, housing, dairy, cotton, handicraft, coffee, Matatu transport SACCOs, Cooperatives, Unions, Kenya National Chamber of Commerce & Industry Officials, Market Management Committees and County Trade staff, community based organizations, civil society and faith based organizations. All the key stakeholders were consulted through both physical meetings and submission of memoranda in compliance with the Statutory Instruments Act, 2013.

Policy Guidance

7. National Treasury and Ministry of Cooperatives and Micro, Small and Medium Enterprises, will sensitize key stakeholders including Parliament and the general public, on the provisions of the Public Finance Management (Financial Inclusion Fund) Regulations, 2022.

IV. Regulatory Impact Assessment

8. The proposed Regulations provides the basis for effective and structured way of ensuring innovation, development and deployment of the bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products which will guarantee sustainability of the Fund.
9. The establishment of the Financial Inclusion Fund will have a net impact of the proposed regulatory rule positive on practice in enhancing financial inclusion. These regulations envisage financial products that shall not remain a preserve of the formally employed but every willing Kenyan at the bottom of the pyramid has an opportunity to be part of the financial services and products offered by the Fund. In addition the regulations have provided management of the Fund with flexibility to design and implement appropriate financial services and products while leveraging on appropriate technology and financial systems.

V. Performance Monitoring and Evaluation of the Fund

10. The Administrator of the Fund will cause the monitoring of the implementation of activities of the Fund and provide quarterly reports to the Cabinet Secretary responsible for the matters relating to micro, small and medium enterprises and

the Cabinet Secretary for National Treasury and Economic Planning with the approval of the Advisory Board.

11. In addition, the Administrator of the Fund may undertake a review of the Fund to determine its effectiveness and report to the Advisory Board. Further, the Advisory Board is tasked with developing policies and operational procedures for the effective monitoring and evaluation of the Fund.

VI. Contact Persons

12. The contact person at the National Treasury and Economic Planning is the Cabinet Secretary, Prof. Njuguna Ndung'u, CBS or the Principal Secretary, Julius Muia, PhD, CBS; and at the Ministry of Cooperative and Micro, Small and Medium Enterprises is the Cabinet Secretary, Hon. Simon Chelugui, EGH or the Principal Secretary, Mr. Ali Noor Ismail, CBS.

PROF. NJUGUNA NDUNGU, CBS
CABINET SECRETARY TO THE NATIONAL TREASURY AND ECONOMIC
PLANNING

Date.....

**REGULATORY
IMPACT
STATEMENT**



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

THE REGULATORY IMPACT STATEMENT

IN THE MATTER OF PUBLIC PARTICIPATION ON:- THE DRAFT PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022.

- (1) **The main objective and reason for the proposed Public Finance Management (Financial Inclusion Fund) Regulations, 2022 are mainly to provide a regulatory framework to facilitate the Fund to innovate, develop and deploy bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products. Specifically, the Regulations seek to:-**
- promote financial inclusion through expanding access to credit by persons, proprietors, micro, small and medium enterprises, chamas, table banking groups, other groups, sacco societies, associations and start-ups for economic growth and job creation;
 - address the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial literacy;
 - strengthen the financial and operational capacity of informal sector membership based financial institutions including SACCO societies, Chamas and table banking groups;
 - promote market interventions to improve supply of affordable credit to micro, small and medium sized enterprises (MSMEs) including creditworthiness-based lending, risk pricing, business and financial management skills, and cost of doing business;
 - address the low participation of the non-formal wage workforce, namely informal sector entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and
 - Provide for Government counterpart funding for the savings for borrowers of the Fund.
- (2) **The effect of the proposed Public Finance Management (Financial Inclusion Fund) Regulations, 2022 include the following:**
- The implementation of the Presidential directive that the National Government will be expected to implement the Financial Inclusion (Kuslers) Fund through capitalization and by expanding access to credit by persons, proprietors, micro, small and medium enterprises, chamas, table banking groups, other organized groups, saccos, associations and start-ups for economic growth and job creation;
 - It is expected that enactment and implementation of these regulations will open up affordable credit facilities for those at the bottom of pyramid and boost the culture of savings and investment while creating momentum for sustainable development;
 - Facilitate the Government to provide capital to individuals and organized groups to enable them bridge the gap in accessing credit and while offering opportunity for savings and to provide pension products that will provide livelihoods in old age;
 - Regulations will facilitate Government to spur up savings and in turn invest these savings in Government Securities, thereby deepening the domestic debt market for purposes of economic development and poverty reduction;
 - The Regulations seek to Cushion the ordinary persons, micro-finance institutions, chamas, table banking groups, other organized groups, savings and credit co-operative organizations and associations from the frequent shocks arising from unpredictable income flows;
 - The Regulations have accorded Government an opportunity to facilitate achievement of the economic and social rights guaranteed in Article 43 of the constitution by addressing the low participation of the non-formal wage workforce, namely informal sector entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security;
 - The Regulations have guarded against market distortions by ensuring that envisaged partnerships by the Fund, are not exclusive or preferential, are technology neutral and do not confer market advantage to any partners over competitors;
 - The implementation of the Regulations will enable the Government of Kenya to enhance economic participation of special interest groups and micro, small and medium enterprise in creation of jobs and general economic development; and
- (3) **The Regulations have provided for the fund shall leverage on existing commercial infrastructure, including mobile payments platforms and financial institutions, including agency, co-financing and on-lending partnerships. This approach will bring efficiency in administration of the Fund.**
- (3) **Possible alternative and practicable means of achieving the foregoing objectives, including other regulatory as well as non-regulatory options:**
- An alternative to the proposed expansion of access to credit by persons, proprietors, micro, small and medium enterprises, chamas, table banking groups, other organized groups, sacco societies, associations and start-ups for economic growth and job creation through this Fund, is the use the existing Public Funds that apply fragmented approach where every segment of the targeted group is addressed separately. This is the approach the government has used over years and has not yielded the desired results. Thus, the proposed framework provides for a one stop shop for a variety of financial products;
 - The other alternative option implies retention of the status quo with regard to the existing methods of access to financial services and products in which case that are not affordable, accessible, appropriate and sometimes predatory, for the bottom of the pyramid segment of the population; and
 - Therefore, the alternatives do not provide for optimal way of achieving the intended objectives of reaching persons in the informal sector.
- (4) **Assessment of the costs and benefits of the proposed Public Finance Management (Financial Inclusion Fund) Regulations, 2022 and of any other practicable means of achieving the same objectives;**
- There are efficiencies arising from this regulatory instrument in access to non-distortionary and sustainable financial products that are affordable, low cost, low risk, and scalable to eligible persons. The Regulations simply provided for flexibility in coming up products for the bottom of the pyramid in the society, whilst leveraging on entrepreneurial spirit of Kenyans to achieve the respective objectives and purpose; and
 - The Fund roll out will leverage on the existing digital capacity in the economy and well structured commercial infrastructure, including mobile payments platforms and financial institutions, for enhanced effectiveness and efficiency towards the achievement of its Objectives.
- (5) **Any other matters specified by the guidelines:**
- Overall, the net impact of the proposed regulatory rule is positive in enhancing financial inclusion. With these regulations, envisaged financial products will not remain a preserve of the formally employed but every willing Kenyan has opportunity to be part of the scheme offered by the fund. In addition the regulations have provided management of the Fund with flexibility to innovate, design and implement appropriate products while leveraging on existing financial systems.
- (6) **Draft copy of the proposed statutory rule.**
- Draft copies of the proposed these Regulations have been posted to the National Treasury website www.treasury.go.ke; Ministry of Co-operatives and Micro, Small and Medium Enterprises Development website www.ushinka.go.ke; State Department for Trade Website www.trade.go.ke; and Micro and Small Enterprises Authority website www.msea.go.ke.

NIJUGUNA NDUNG'U, PHD, CBS
CABINET SECRETARY/NATIONAL TREASURY & ECONOMIC PLANNING

KENYA
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PUBLIC NOTICE

National News

Justice They were found guilty of killing three men

Killer officers to be sentenced next month

Justice Jessie Lessit said to be away on official duties

BY JOSEPH WANGUI

The sentencing of three police officers and a civilian found guilty of killing a lawyer and two other people six years ago has been pushed to December 16 as the judge responsible is away.

This came as one of the accused officers, Stephen Chiburet, complained of ill health and had prison food.

Chiburet wants the court to direct prison authorities to serve him milk, potatoes and cabbage. Appearing before High Court Judge Daniel Ogembo in Nairobi yesterday, Chiburet said he is only surviving on ugali.

Chiburet was convicted alongside officers Frederick Leliman and Sylvia Wanjiku as well as police informer Peter Ngugi on July 22.

Justice Jessie Lessit, now a judge of the Court of Appeal, found them guilty of killing rights lawyer Willie Kimani, his client Joseph Mwendwa and taxi driver Joseph Muiruri on June 23, 2016.

The bodies of the three men were found stashed in gunny bags in Ol Donyo Sabuk, Machakos County on July 1, 2016.

They had been dumped in Nyeri Athi and were found more than a week after the men were reported missing.

A fourth police officer, Leonard Mwangi, was acquitted.

The verdict was to be rendered by Justice Lessit yesterday but Justice Ogembo said she was away on official duties.



Chiburet during a court appearance. FILE/NAIEN

He allowed a request by the four to file written submissions on the sentencing.

The court said lawyers of Leliman and Chiburet would be allowed to appear before Justice Lessit for oral hearing of their arguments on sentencing before the verdict is read.

Judge Lessit will deliver the sentences after considering the victims' impact assessment report, the prosecution submissions and mitigation of the guilty plea.

Regarding Chiburet's health, Justice Ogembo ordered that he be presented to the Industrial Area Romand Prison clinical officer for medical checkup.

"If there is any recommendation to be made by the clinical officer he will do so," Justice Ogembo said.

Justice Lessit said the accused persons had a common intention.

"I am satisfied that the prosecution established beyond reasonable doubt that the accused were principal offenders and acted in one common intention to commit the offences as charged," she said while finding the accused guilty of murder.

The judge added that the evidence on analysis of the officers' mobile phones and communication gadgets given by the National Police Service locked them at the scene of the killing in Mlolongo.

It also showed their movement when the bodies were dumped in Ol Donyo Sabuk, more than 100 kilometres from Mlolongo.

"The prosecution relied on technological and forensic evidence, confessions and phone call data from Safaricom and Airtel," the judge said.

"The call sites were captured in the data, handset history, geographical locations and movement."

Kimani was defending Mwendwa who had accused Leliman of shooting him for no apparent reason in 2015.

Justice Lessit, who concluded the case on February 11, 2022 said it was the longest in her career.

Some 72 prosecution and defence witnesses were called. There were more than 7,000 pages of hand written proceedings.

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Man, 43, on defilement charge

BY DANIEL OGETTA AND NICHOLAS KOMU

A "man of God" who has been running a centre for orphans in Uthiru, on the outskirts of Nairobi, has been charged with defiling a 15-year-old girl.

Police say the 43-year-old hosted orphans at his house and multiple rental properties for more than a year.

The man, identified as Brother John or "Brother John", denied the charge. Fourteen children were taken from his house.

Dagoretti police chief Francis Wahome said the five girls and nine boys are in protective custody.

Detectives at Kileleshwa police station have been monitoring activities at a dingy residential plot on Muhuri Road, Dagoretti Sub-County, following reports of child abuse.

Court documents seen by the Saturday Nation show that the 15-year-old said she was defiled by Brother John.

The police commander said the "house" was operating illegally, prompting the arrest of Brother John.

"We received reports of suspicious activities and allegations of children being abused by their caregiver at the centre. The immediate action was to ensure the safety of the youngsters. The Children's Department has since placed them in homes," Mr Wahome said.

Last week, police presented Brother John to a court in Elberta where he was charged with one count of defilement.

Police want to establish if Brother John sexually abused the other children under his care.

"We have evidence in the case involving the girl. The other children are still being questioned. The matter is not over yet," Mr Wahome added.

The Saturday Nation has also learnt that Brother John is being investigated for child trafficking. Some of the children are said to be from as far as Kilifi County but it is not known how they ended up at the man's house.

Detectives on Monday secured orders to continue holding Brother John for 10 days as they finalise investigations.

Some locals said Brother John is a generous man with a heart for the underprivileged in society.



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

PUBLIC NOTICE

DRAFT PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

The National Treasury and Economic Planning has finalized preparing the Public Finance Management (Financial Inclusion Fund) Regulations, 2022. These Regulations have been posted to the National Treasury website www.treasury.go.ke; Ministry of Co-operatives and Micro, Small and Medium Enterprises Development website www.ushikia.go.ke; and Micro and Small Enterprises Authority website www.msea.go.ke; Ministry of Trade, Investments and Industry website <http://www.trade.go.ke>

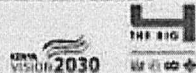
Pursuant to Sections 4 (a) and 5 (3) (a) and (b) of the Statutory Instrument Act, 2013, the National Treasury invites interested members of the general public to submit written comments and or inputs/memoranda on the draft Public Finance Management (Financial Inclusion Fund) Regulations, 2022 in the format provided on the website.

The comments or inputs or memoranda may be forwarded to the Principal Secretary, National Treasury, P.O. Box 30007-00100, Nairobi; hand delivered to the Office of the Principal Secretary, National Treasury Building, Nairobi; or soft copy emailed to ps@treasury.go.ke, with a copy to hustlersfund@treasury.go.ke to be received by **Friday, 18th November, 2022 at 5.00 pm.**

Further, the National Treasury invites interested members of the public to attend public consultations as per the schedule set out below:

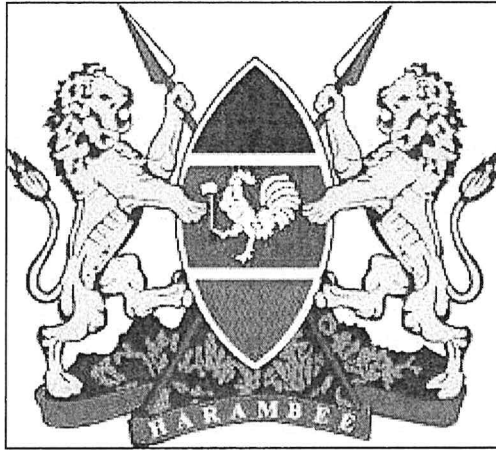
COUNTIES	WORKSHOP VENUE	DATE & TIME
CLUSTER A		
Meru, Embu, Tharaka Nithi, Isiolo & Marsabit	Meru	Monday, 14 th November, 2022 at 10:00 a.m.-1:00 p.m.
Kitui, Makuuri, Machakos & Taita Taveta	Kitui	Tuesday, 15 th November, 2022 at 10:00 a.m.-1:00 p.m.
Mombasa, Kwale, Kilifi, Lamu & Tana River	Mombasa	Wednesday, 16 th November, 2022 at 10:00 a.m.-1:00 p.m.
CLUSTER B		
Nakuru, Nyandarua, Samburu, Narok, Kericho & Baringo	Nakuru	Monday, 14 th November, 2022 at 10:00 a.m.-1:00 p.m.
Murang'a, Nyeri, Kirinyaga & Laikipia	Nyeri	Tuesday, 15 th November, 2022 at 10:00 a.m.-1:00 p.m.
Nairobi, Kiambu, Kajjado, Wajir, Garissa & Mandera	Nairobi	Wednesday, 16 th November, 2022 at 10:00 a.m.-1:00 p.m.
CLUSTER C		
Uasin Gishu, Elgeyo Marakwet, Nandi, West Pokot & Turkana	Eldoret	Monday, 14 th November, 2022 at 10:00 a.m.-1:00 p.m.
Busia, Bungoma, Vhiga, Siaya, Kakamega & Kisumu	Kisumu	Tuesday, 15 th November, 2022 at 10:00 a.m.-1:00 p.m.
Kisii, Bomet, Nyamira, Homabay & Migori	Kisii	Wednesday, 16 th November, 2022 at 10:00 a.m.-1:00 p.m.

Prof. Njuguna Ndung'u, PhD
CABINET SECRETARY/NATIONAL TREASURY & ECONOMIC PLANNING



**TABLE OF MATRIX
OF COMMENTS
RECEIVED**

REPUBLIC OF KENYA



THE NATIONAL TREASURY AND ECONOMIC PLANNING

**REPORT OF THE PUBLIC CONSULTATIONS ON THE DRAFT
PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND)
REGULATIONS, 2022**

NOVEMBER, 2022

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I. BACKGROUND

1. Many Kenyans who work in the informal sector encompassing Micro, Small and Medium Enterprises (MSMEs) rarely have credit facilities or save their earnings for lack of products that take into account their diverse needs.
2. Kenyans working in MSMEs experience frequent shocks arising from unpredictable income flows and are not able to cushion themselves against such volatilities and have been negatively impacted by the COVID-19 pandemic.
3. The informal sector accounts for more than 80 percent of the employment and contributes over 33 percent of the Kenya's Gross Domestic Product. Therefore, this sector has the potential to contribute immensely to the growth and development of our country and this calls for more targeted support by government to harness their potential in the development of the country.
4. It is against this background that the Government committed to the establishment of the Financial Inclusion Fund. Once established, the Fund is expected to open up affordable credit facilities for the bottom of society and boost the savings culture while creating momentum for sustainable development. It is envisaged that the Fund will provide access to affordable credit while promoting a culture of savings and investments.

II. PUBLIC PARTICIPATION

5. In compliance with the Constitution, the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 on public participation, the National Treasury put up a public notice inviting interested members of the public to submit written comments and or inputs/memoranda on the draft Public Finance Management (Financial Inclusion Fund) Regulations, 2022 in the prescribed format, by 18th November, 2022. The public notice also invited key stakeholders to Regional Town Hall meetings on 14th-16th November, 2022. *(A copy of the public notice is attached as Appendix I).*
6. The members of the public who attended the physical Town Hall meetings and provided comments were approximately 3,500. Written memoranda of comments on proposed Public Finance Management (Financial Inclusion Fund) Regulations, 2022 were received from various stakeholders, including: National Gender and Equality Commission; Financial Sector Deepening(FSD); Kenya Disability Parliamentary

Association(KDPA); Kenya Union of Savings & Credit Cooperatives (KUSCCO); Institute of Certified Public Accountants of Kenya (ICPAK); Ashitiva Advocates LLP; Gerivia Advocates LLP; Digital Financial Services Association Of Kenya; Cooperative University of Kenya; University of Nairobi, African Women Studies Centre & 3 others; The Service Party (TSP); Tana Delta Conservation Network, Tana River County; Networking and Alliance Building for Women's Economic Empowerment (NAWBEE); Cooperative University of Kenya; The Taita Taveta Youth Alliance; Migori Women's Economic Empowerment Network; Nakuru County Public Opinion Consultative Initiative; Wundanyi Public Consultation Forum; Voi Public Consultation Forum; Maendeleo ya Wanaume Kikuyu/Kabete CBO; Institute Of Certified Investment and Financial Analysts (ICIFA); and Youth Serving Organisations. *(A list of participants is attached as Appendix II).*

7. The comments received and analyzed were four hundred and seventy (470) comments and:
 - a) accepted one hundred and eighty-eight (188) as proposed;
 - b) accepted one hundred and thirty-seven (137) with modifications; and
 - c) did not accept one hundred and forty-five (145) with justification.

III. CONCLUSION

8. The accepted comments have been incorporated into the proposed Public Finance Management (Financial Inclusion Fund) Regulations, 2022 as far as possible prior to publication. *(A copy of the matrix of received and analyzed comments is attached as Appendix III)*

APPENDIX I – PUBLIC NOTICE INVITING COMMENTS ON THE PROPOSED PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022

APPENDIX II – PUBLIC PARTICIPATION ATTENDANCE REGISTERS

APPENDIX III –REPORT ON ANALYSIS OF COMMENTS ON THE PROPOSED PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022