



LEGAL NOTICE NO.....

**THE PUBLIC FINANCE MANAGEMENT (DISASTER
MANAGEMENT FUND) REGULATIONS, 2022**

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SCHEDULES

**THE PUBLIC FINANCE MANAGEMENT ACT, 2012
(No. 18 of 2012)**

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

**THE PUBLIC FINANCE MANAGEMENT (DISASTER
MANAGEMENT FUND) REGULATIONS, 2022**

PART I—PRELIMINARY

Citation. **1.** These Regulations may be cited as the Public Finance Management (Disaster Management Fund) Regulations, 2022.

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

*No. 18 of
2012.*

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

“Administrator of the Fund” means a person designated as such under regulation 16 (1);

“Board” means the Disaster Management Fund Board established under regulation 10 (1);

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

“disaster” means progressive or sudden disruption of the functioning of a community, which causes widespread human, material, economic or environmental, losses which exceed the ability of the affected community to cope using its own resources;

“disaster management” means a continuous and integrated multi-sectoral process of planning and implementation of measures geared towards disaster preparedness, response, mitigation and recovery;

“Fund” means the Disaster Management Fund established under regulation 4;

“preparedness” means pre-disaster activities that are undertaken within the context of disaster risk management and are based on sound risk analysis;

“response” means the provision of emergency services and public assistance during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the affected people;

“recovery” means restoration and improvement where appropriate of facilities, livelihoods and living conditions of disaster affected communities including efforts to reduce disaster risk factors;

“mitigation” means structural and non-structural measures undertaken to limit the adverse impact of natural hazards, environmental degradation and technological hazards.

Scope of Regulations.

3. (1) These Regulations shall apply to the objects and purpose of the Fund specified under regulation 5.

L.N.No 27 of 2021.

(2) Despite paragraph (1), these Regulations shall not apply to drought related disasters provided for under the Public Finance Management (National Drought Emergency Fund) Regulations, 2021.

PART II — ESTABLISHMENT OF THE DISASTER MANAGEMENT FUND

Establishment
of the Fund.

4. There is established a Fund to be known as the Disaster Management Fund.

Objects and
purpose of
Fund.

5. (1) The objects and purpose of this Fund shall be to mobilize resources towards efficient and effective disaster management.

(2) Without prejudice to the generality of paragraph (1), the Fund shall—

- (a) facilitate disaster preparedness, mitigation, response and recovery;
- (b) provide a common basket for receipt and disbursement of funds for disaster management;
- (c) provide financing mechanisms for timely, transparent and accountable disaster management;
- (d) support capacity development of institutions mandated with disaster management;
- (e) support agencies dealing with early warning systems for disaster management;
- (f) support, programmes, projects or activities to further the objectives under this regulation; and
- (g) perform any other purpose approved by the Board that would enhance the development and promotion of prudent disaster management in the country.

Sources
of
Fund.

6. The Fund shall consist of—

- (a) such moneys as may be appropriated by the National Assembly;
- (b) grants or donations for the purposes of the Fund;
- (c) income generated from the proceeds of the Fund; and
- (d) any moneys accruing to or received by the Fund from any other lawful source, as may be approved by the Cabinet Secretary.

Initial capital of Fund. **7.** The initial capital of the Fund shall be Three Billion shillings appropriated by Parliament in the financial year **2022/2023.**

Apportionment of Fund. **8.** (1) The Fund shall be apportioned as follows—
(a) an amount not exceeding seventeen per centum (17%) to disaster mitigation and preparedness;
(b) an amount not exceeding fifty-five per centum (55%) to disaster response;
(c) an amount not exceeding twenty-five per centum (25%) to disaster recovery; and
(d) an amount not exceeding three per centum (3%) of the approved budget as the administration cost of the Fund.

(2) Despite paragraph (1), the Board may recommend to the Cabinet Secretary the variation of thresholds in favour of response for use in any particular financial year.

Expenditure of Fund. **9.** (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

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

(3) Any revision of the approved annual work programmes and any cost estimate shall be referred to the Board for approval.

PART III — MANAGEMENT OF THE FUND

Establishment of the Board. **10.** (1) There is established a Board to be known as the Disaster Management Fund Board.

(2) The Board shall consist of—

- (a) a non-executive chairperson, appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters relating to disaster management;
- (c) the Principal Secretary for the time being responsible for matters relating to finance;
- (d) the Principal Secretary for the time being responsible for matters relating to internal security;
- (e) the Principal Secretary for the time being responsible for matters relating to Defence;
- (f) the Principal Secretary for the time being responsible for matters relating to Health;
- (g) three persons, being public officers, nominated by the Council of Governors who are responsible for matters relating to disaster management, finance or public administration; and
- (h) three persons, who are not public officers, appointed by the Cabinet Secretary for the time being responsible for disaster management.

(3) The members of the Board appointed under paragraph 2 (b), (c), (d), (e) and (f) may attend in person or through a representative nominated in writing.

(4) The Cabinet Secretary responsible for disaster management shall, in appointing members of the Board specified under paragraph 2 (h), take into account affirmative action, gender equity, disability and ethnicity pursuant to the requirements of Articles 27, 54 and 55 of the Constitution.

(5) The chairperson and members of the Board appointed under paragraphs (2) (a), (g) and (h) shall subject to regulations 12 and 13 serve for a term of three years renewable once, subject

to satisfactory performance.

(6) The Board may, from time to time co-opt other members as it may deem necessary, for the proper and efficient discharge of its functions, for such period as the Board may consider necessary.

(7) The procedure for the conduct of the meetings of the Board shall be in the manner set out in the First Schedule.

Qualification
of the
chairperson
and members
of the Board.

11. A person shall be eligible for appointment as a chairperson or a member of the Board under regulation 10 (2) (a) and (h), if that person –

- (a) has at least a university degree from a university recognized in Kenya;
- (b) has professional experience of not less than ten years in any of the following fields—
 - (i) disaster risk management;
 - (ii) finance;
 - (iii) public administration;
 - (iv) law; or
 - (v) any other relevant field; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

Vacancy in
office.

12. The office of the chairperson or a member appointed under regulation 10 (2) (a), (g) and (h) may become vacant, if the holder—

- (a) dies;
- (b) resigns from office by notice, in writing, addressed to the appointing authority;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) is adjudged bankrupt;

- (e) term of office expires; or
- (f) is removed from office for any of the grounds provided under regulation 13 (1).

Removal from
Office.

13. (1) The chairperson or a member appointed under regulation 10 (2) (a), (g) and (h) may be removed from office by the appointing authority, if that person –

- (a) has been convicted of an offence for a period exceeding six months without the option of a fine;
- (b) commits gross misconduct, whether in the performance of the office holder's functions or otherwise;
- (c) is unable to perform the functions of the Office for physical or mental incapacity;
- (a) is incompetent or neglects his duty;
- (b) is absent from three consecutive meetings of the Board without permission from the Chairperson of the Board;
- (c) violates the Constitution or any other written law;
- or
- (d) is otherwise unable or unfit to discharge the functions of office.

(2) Before the appointing authority makes a decision under regulation 13 (1), the appointing authority shall be guided by the provisions of the Fair Administrative Action Act, 2015.

Filling
vacancy.

14. If a vacancy occurs in the membership of the Board pursuant to any ground specified under regulation 12 or 13 , the appointing authority may, if the vacancy relates to any of the positions specified under regulation 10 (a) (g) and (h) appoint a new member in accordance with these Regulations within a period of six months.

Functions of
the Board.

15. (1) The functions of the Board shall be to—

- (a) provide oversight on the administration and management of the Fund;
- (b) formulate policies to achieve the objects and purpose of the Fund;
- (c) consider, review and approve estimates of revenue and expenditure of the Fund for each financial year;
- (d) give approval for the opening of any bank account in accordance with section **regulation 30**;
- (e) receive, review and approve statutory and management reports of the Fund before submission to the Auditor-General with copies to the National Treasury and Controller of Budget;
- (f) advise the Cabinet Secretary responsible for matters relating to disaster management on the proper administration of the Fund;
- (g) approve, monitor and evaluate programs and activities of the Fund;
- (h) mobilise resources for the Fund;
- (i) set disaster response threshold for disbursement of the Fund;
- (j) develop a criteria for funding arrangements with third parties; and
- (k) perform such other duties for the proper administration and management of the Fund.

(2) In exercising its functions, under paragraph (1), the Board may require an entity to provide additional information and documentation to access the Fund.

Administration
of the Fund.

16. (1) The Administrator of the Fund shall be the Principal Secretary responsible for disaster management or any other person designated by the Cabinet Secretary.

(2) The Administrator of the Fund shall be the Secretary to the Board.

(3) The Administrator of the Fund shall—

(a) open and operate a designated bank account at the Central Bank or a commercial bank approved by the Board and the National Treasury in accordance with the Act;

(b) supervise and control the administration of the Fund;

(c) cause to be kept proper books of accounts and record in relation to the Fund;

(d) prepare, sign and submit to the Board in respect of each financial years and within three months, after the end thereof, a statement of account related to the fund for approval;

(e) prepare, sign and transmit to the Auditor General, upon the approval by the Board, in respect of each financial year and within three months after the end, thereof, a statement of accounts relating to the fund and submit a copy to the National Treasury and the statements in accordance to the provisions of the Act and Public Audit Act, 2015;

(f) prepare and submit quarterly and annual reports on financial and non-financial performance of the fund in accordance with the provisions of the Act; and

(g) be the custodian of all the assets, equipment and property under the Fund.

No. 34 of
2015.

Secretariat of
the Fund.

17. (1) There shall be a Secretariat of the Fund which shall consist of a Head and such other staff as are necessary for the proper discharge of the functions of the Fund.

(2) The Board, in consultation with the Public Service Commission shall designate the Head and other staff of the Secretariat from amongst staff serving in the public service.

(3) The Head of the Secretariat shall report to the administrator of the Fund and shall—

- (a) be responsible for the day-to-day management of the Fund;
- (b) provide secretariat services to the Board;
- (c) implement the decisions of the Board; and
- (d) perform any other duty as they may be assigned by the Administrator of the Fund.

PART IV— CRITERIA FOR ACCESSING THE FUND

Access to Fund.

18. (1) Subject to regulation 6, the Fund shall be accessed for the following components of disaster management—

- (a) mitigation;
- (b) preparedness;
- (c) response; and
- (d) recovery.

(2) The National Government Ministries, Departments and Agencies and County Governments shall be eligible for funding on any of the components of disaster management specified under paragraph (1), subject to satisfying the requirements specified under regulations 19, 20, 21 or 22 and any other requirement that the Board may determine from time to time.

(3) In determining eligibility under this regulation, the Board shall also consider the levels of disaster response specified under the Second Schedule.

Obligations of
County
Governments.

19. (1) Subject to paragraph (2), each County Government shall be required to manage disasters in accordance with paragraph 12 of the Fourth Schedule of the Constitution.

(2) Without prejudice to the generality of paragraph (1), a county Government shall be responsible for disasters as specified in level 1 and 2 of the Second Schedule.

Disaster
mitigation.

20. A request for funding of activities on disaster mitigation shall include—

- (a) a vulnerability and risk assessment report;
- (b) proof that the activity does not duplicate existing efforts;
- (c) proof that a funding gap exists, approved budget estimates, approved workplan; and
- (d) proof that the activity will prevent or reduce the impact or consequences of a disaster.

Disaster
preparedness.

21. A request for funding activities on disaster preparedness shall —

- (a) include the strategic plan, contingency plans, sector policies or strategies which have been prioritised disaster preparedness;
- (b) be based on disaster early warning information;
- (c) demonstrate that it will facilitate effective response;
- (d) proof that it does not duplicate existing efforts; and
- (e) proof that a funding gap exists.

Disaster
response.

22. A request for funding of activities on disaster response shall demonstrate that the proposed interventions shall contribute towards saving lives and livelihoods, reduce the impacts on affected sectors and fiscal burden and guided by —

- (a) a declaration of a disaster by the President; or proof that the magnitude of the disaster has reached the threshold for disbursement determined by the Board

as specified in the second Schedule.

Disaster
recovery.

23. A request for funding of activities on disaster response shall include—

- (a) demonstration of loss of livelihoods or productive assets as a result of a disaster; and
- (b) relevant post-disaster needs assessment report.

Procedure for
making
request
for
funding.

24. (1) A request for funding shall—

- (a) be made in writing and in the form in which the Board may specify; and
- (b) be addressed to the Head of the Secretariat.

(2) Upon receipt of a request under paragraph (1), the Head of the Secretariat shall submit the request to the Administrator of the Fund for evaluation on compliance with the requirements set out under regulations 20, 21, 22 or 23.

(3) The Administrator of the Fund shall on evaluation of the request for funding make recommendations to the Board for consideration and approval.

(4) The Head of the Secretariat shall, in writing, communicate the decision of the Board within seven days of such decision.

(5) Despite these Regulations, a request for funding of activities under regulation 24 shall be considered and communicated, in writing, within twenty-four hours of receipt of the application.

Operational
procedures for
disbursement
and
accountability.

25. The Board shall develop operational procedures for disbursement and accountability of Funds under these Regulations.

PART V — FINANCIAL PROVISIONS

- Application of Government regulations and procedures. **26.** Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.
- Financial year of the Fund. **27.** The financial year of the Fund shall be the period of twelve months ending on the 30th of June of every year.
- Preparation and submission of a work plan. **28.** The Administrator of the Fund shall prepare and submit to the Board for approval a work plan in respect of a financial year.
- Withdrawal from the Funds. **29.** (1) Withdrawals from the Fund shall only be for purposes of approved use or investment of surplus funds and operational expenditure of the Fund.

(2) The Administrator of the Fund shall keep an up to date record of all expenditure and disbursements of the Fund maintained in accordance with the provisions of the Act and Regulations made thereunder.
- Opening of Bank account. **30.** (1) The accounts shall be held for and on behalf of the Fund shall be in the name of the Disaster Management Fund.

(2) The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.
- Investment of Funds. **31.** The Administrator of the Fund may, with the approval of the Board, and in consultation with the Cabinet Secretary invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Act.

Annual reports. **32.** (1) The Administrator of the Fund shall prepare annual reports in accordance with the provisions of the Act .

(2) In addition, the Administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted together with the report referred to under paragraph (1).

Annual estimates **33.** At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year in accordance to the Act.

Retention of receipts. **34.** 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 use for the purpose for which the Fund is established.

Audit. **35.** The books of accounts of the Board including donor funds shall be prepared, audited and reported in accordance with Articles 226 and 229 of the Constitution, the Act and the Public Audit Act, 2015.

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PART VI— MISCELLANEOUS PROVISIONS

Conflict of interest. **36.** The Board shall not hold any interest in any property of the Fund otherwise other than in their capacity as Board members of the Fund or be interested in the supply of work, goods or services to the Fund or any other non-pecuniary conflict of interest.

Offences and penalties. **37.** (1) A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, on conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

(2) In addition to the penalty prescribed under paragraph (1) and subject to existing relevant law, the court may order for the recovery of the monies or assets acquired as a result of the commission of the offence thereof.

Personal liability.

38. The chairperson, member or staff of the Board shall not be liable for any action, suit or proceedings for or in respect of any act done or omitted to be done in good faith in exercise of the functions, powers and duties conferred under these Regulations.

Winding-up of the Fund.

39. The Fund may be wound up in accordance with the provisions of the Act.

FIRST SCHEDULE

PROVISIONS ON THE CONDUCT OF THE MEETINGS

(r.10(7))

OF THE BOARD

Convening of meetings

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) The chairperson shall, in consultation with the Head of the Secretariat—
 - (a) determine the agenda of the meetings of the body including the date, time and venue of the meeting; and
 - (b) convene and chair its meetings.
- (3) In the absence of the chairperson at a meeting of the Board, the meeting shall be chaired by the vice-chairperson elected by the members of the Board.

Special meetings

2. The chairperson shall, on the written requisition of one-third of the members of the Board, convene a special meeting of the Board.

Notice of meetings

3. Except in the case of a special meeting, at least fourteen days written notice of a meeting of the Board shall be issued to each member of the Board.

Quorum

4. The quorum for the conduct of the business of a meeting of the Board shall be two thirds of the members of the Board:
Provided that a vacancy in the membership of the Board shall not affect the quorum of the meetings.

Attendance by non-members

5. The Board may invite a person who is not a member of the Board to attend and participate at a sitting of the Board but such person shall not be entitled to vote.

Other procedures

6. Except as provided in this Schedule, the Board may regulate its own procedure

LEVELS FOR DISASTER REPOSE

Level 1	Localized disaster events dealt within the regular operating mode of the protective, emergency and health services in Villages, Wards and Sub-County.
Level 2	Disaster events that overwhelm the capacity of the resources in Sub-County, but which do not overwhelm the capacity of the County resources to respond and recover.
Level 3	Disaster events that overwhelm a County and require mobilizing national resources to respond and recover.
Level 4	Disaster events that overwhelm the existing National response capacity, thus prompting the President to seek Regional/International assistance to support the country in response and recovery.

NOTE:

1. The levels for disaster management in the matrix are as specified in the National Disaster Risk Management Policy and the existing laws.
2. Disaster occurrence and effects are sector specific and the responsibility for managing sector related disaster risks shall be guided by the functional assignment of both levels of government as specified in the Fourth Schedule to the Constitution.
3. The responsibility for managing disaster risks which are specific to function assigned to the counties lies with County Governments and a disaster that is within level 1 or 2 is the responsibility of the county government.
4. A disaster that is within the functions assigned to County Governments under the Fourth Schedule of Constitution and is within level 3, the national government shall provide the necessary leadership and intervention in consultation with the respective county government. However, the functional responsibility remains with the level of

government to which it is assigned as per the Fourth Schedule to the Constitution.

5. A disaster that is within the exclusive functions assigned to the National Government under the Fourth Schedule of the Constitution, and falls under levels 3-4, shall be the responsibility of the National Government.

Made on the....., 2022.

UKUR YATANI
Cabinet Secretary for the National Treasury and Planning.