



LEGAL NOTICE.....

**THE PUBLIC FINANCE MANAGEMENT ACT
(Cap. 412A)**

**THE PUBLIC FINANCE MANAGEMENT (PUBLIC PROSECUTIONS
FUND) REGULATIONS, 2024**

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THE PUBLIC FINANCE MANAGEMENT ACT
(Cap. 412A)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act (Cap. 412A), the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (PUBLIC PROSECUTIONS FUND) REGULATIONS, 2024

PART I—PRELIMINARY

Citation. 1. These Regulations may be cited as the Public Finance Management (Public Prosecutions Fund) Regulations, 2024.

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

Cap. 412A “Act” means the Public Finance Management Act;

 “Administrator of the Fund” means the person designated as such under regulation 17(1);

 “Board” means the Public Prosecution Advisory Board established in accordance with regulation 8;

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

 “deferred prosecution” means amnesty granted by the Office of the Director of Public Prosecutions to an accused person in exchange for the accused person agreeing to fulfil certain requirements set by the Office;

Cap. 6B. “Director” means the Director of Public Prosecutions appointed in accordance with Article 157(2) of the Constitution and section 8 of the Office of the Director of Public Prosecutions Act;

Cap. 412A “Fund” means the Public Prosecutions Fund established in accordance with section 24(4) of the Public Finance Management Act;

 “Office” means the Office of the Director of Public Prosecutions established under Article 157(1) of the Constitution;

 “plea bargaining agreement” means an agreement entered into by the accused and the Office of the Director of Public Prosecutions requiring an accused person to plead guilty to an

offence in exchange for some concessions by the prosecution;
and

“Preservation of assets” means the process of securing
assets for purposes of future prosecution or forfeiture.

Object of the
Regulations.

3. The object of these Regulations shall be to provide a
framework for the administration and management of the Fund.

Purpose of the
Fund.

4. The purpose of the Fund shall be to—

- (a) support and facilitate the tracing, forfeiture or recovery
of assets;
- (b) support and facilitate other government agencies
collaborating or assisting the Office in tracing,
forfeiture or recovery of assets;
- (c) facilitate the preservation of assets in the custody of the
investigating agency;
- (d) support the development and operationalization of a
centralized case management and information system;
- (e) support mechanisms and measures to enhance the
efficiency and effectiveness of the Office;
- (f) support restorative and restitution justice processes;
- (g) support international cooperation and mutual legal
assistance;
- (h) facilitate witness expenses;
- (i) facilitate the collection, retrieval, preparation,
production and provision of documentary evidence,
electronic, forensic and related evidence;
- (j) facilitate multi-agency approach in investigations and
prosecutions that are initiated or undertaken by the
Office;
- (k) facilitate technical assistance for Kenyan and
international experts in complex and high-profile cases;
- (l) facilitate partnerships, collaboration and the
establishment of professional networks with other
prosecution agencies in Kenya and internationally;

- (m) facilitate service of process in remote and inaccessible areas;
- (n) facilitate training and capacity building for officers and staff of the Office; and
- (o) facilitate any other expense approved by the Administrator of the Fund that promotes the objects for which the Fund was established.

PART II—THE PUBLIC PROSECUTIONS FUND

Sources of funds.

5. The Fund shall consist of—

- (a) amounts of money appropriated by the National Assembly;
- (b) grants and donations;
- (c) amounts of money from deferred prosecutions;
- (d) amounts of money from proceeds of plea-bargaining agreements;
- (e) amounts of money from proceeds of preservation orders;
- (f) amounts of money from incidental compensation and restitution orders; and
- (g) income generated from the investments of the Fund.

Payments out of the Fund.

6. (1) There shall be paid out of the Fund amounts of money in respect of expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The payments out of the Fund shall only be based on annual work programs and cost estimates which shall be prepared by the Administrator of the Fund at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work plan and any cost estimates shall be submitted to the Board for advice before the revised annual work plan is implemented.

Retention of funds.

7. The earnings or, and accruals to, the Fund shall be retained in the Fund and shall be spent only for the purposes for which the Fund is established.

**PART III—THE PUBLIC PROSECUTIONS FUND
ADVISORY BOARD**

Establishment of
the Board.

8. (1) There is established a Board to be known as the Public Prosecutions Fund Advisory Board.

(2) The Board shall consist of—

- (a) the Director of Public Prosecutions, who shall be the chairperson;
- (b) the Attorney-General or their representative appointed in writing;
- (c) the Principal Secretary for the time being responsible for matters relating to Finance or their representative appointed in writing;
- (d) the Inspector-General or their representative appointed in writing;
- (e) an Advocate of the High Court of not less than ten years standing nominated by the Law Society of Kenya and appointed by the Cabinet Secretary;
- (f) the head of the executive office of the Director; and
- (g) the Secretary of Prosecution Services, who shall be the secretary to the Board;

Committees of the
Board.

9. The Board may establish such committees of its members as may be necessary to help in the discharge of its functions.

Board may co-opt.

10. The Board may co-opt any person, not being a member of the Board, to a committee of the Board to provide such expertise as may be required in the circumstances.

Meetings of the
Board.

11. The Board shall meet at least four times in each year and not more than three months shall elapse between one meeting of the Board and the next meeting.

Quorum.

12. The quorum at a meeting of the Board shall be five members.

Board may
regulate its own
procedure.

13. Except as provided in these Regulations, the Board may regulate its procedure.

Tenure.

14. A member of the Board, other than an *ex officio* member, shall hold office for three years and shall be eligible for re-appointment for only one further term.

Functions of the Board.

15. The functions of the Board shall be to—

- (a) oversee the administration of the Fund;
- (b) consider, review and approve estimates of revenues and expenditures of the Fund and recommend them to the Cabinet Secretary for approval;
- (c) approve policies to guide the administration of the Fund;
- (d) approve opening and closing of bank accounts of the Fund in accordance with the Act;
- (e) consider, review and approve the quarterly financial and non-financial reports of the Fund prepared in accordance with the Act;
- (f) consider, review and approve the annual financial and non-financial statements of the Fund prepared in accordance with the Act in the format prescribed by the Public Sector Accounting Standards Board for submission to the Auditor-General with a copy to the National Treasury, Commission on Revenue Allocation and Controller of Budget;
- (g) consider, review and approve the investment policies for the investment of surplus funds;
- (h) advise the Administrator of the Fund on proper administration of the Fund;
- (i) approve policies for safeguarding assets of the Fund;
- (j) facilitate and develop sectoral linkages to the Fund; and
- (k) advise the Cabinet Secretary on the funding requirements of the Fund.

PART IV—ADMINISTRATION OF THE FUND

Chief Executive Officer.

16. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Cabinet Secretary upon recommendation by the Board.

(2) Where a substantive Chief Executive Officer has not been appointed, the Cabinet shall designate a public officer to act as the Chief Executive Officer.

(3) A person shall qualify for appointment as a Chief Executive Officer if such person—

- (a) holds a degree in either economics, accounting, finance or any other relevant field from a university recognized in Kenya;
- (b) has at least ten years of knowledge and experience in a relevant field;
- (c) has served in a position of senior management for at least five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) A person shall not qualify for appointment as a Chief Executive Officer if such person—

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been convicted of a felony; or
- (e) has been removed from public office for contravening the provisions of the Constitution or any other law.

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

- (a) for a term of five years non-renewable; and
- (b) on such terms and conditions as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Administrator of
the Fund.

17. (1) The Chief Executive Officer appointed under regulation 16 (1) shall be the Administrator of the Fund.

(2) The Administrator of the Fund shall—

- (a) develop predictable, transparent and accountable financial internal control systems for the Fund;

- (b) prepare estimates of annual revenue and expenditure of the Fund and submit them to the Board for advice before adoption;
- (c) establish proper systems of control and oversight in accordance with the provisions of the Act;
- (d) consult the Board on matters relating to the administration of the Fund;
- (e) prepare a non-financial performance report of the Fund and submit it to the Board for adoption;
- (f) be the custodian of the property, assets and equipment of the Fund;
- (g) keep or cause to be kept proper books of accounts and other books and records relating to the Fund; and
- (h) prepare, sign, and transmit to the Auditor-General in respect of each financial year and within three months after the end of the financial year, a statement of account relating to the Fund in such form as the Public Sector Accounting Standards Board prescribes.

(3) The Administrator of the Fund shall comply with the ordinary Government budget cycle in the preparation of the estimates for the Fund.

(4) Upon approval by the Board, the Administrator of the Fund shall submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of each financial year for approval

Secretariat of the Fund.

18. (1) There shall be a secretariat to support the functions of the Administrator of the Fund.

(2) The Director shall designate such officers in the Office to be the staff of the secretariat.

(3) The Administrator of the Fund may assign duties to the staff of the secretariat in respect of the administration and management of the Fund.

PART V—FINANCIAL PROVISIONS

Financial year.

19. The financial year of the Fund shall be twelve months commencing on the first of July in each year and ending on the thirtieth of June.

Bank accounts of the Fund.

20. (1) The Administrator of the Fund shall cause bank accounts in the name of the Fund to be maintained for the Fund in a bank regulated by the Central Bank of Kenya in accordance with the Act.

(2) All amounts of money payable to the Fund shall be paid into the bank accounts of the Fund.

(3) The Fund's bank accounts shall be operated by the Administrator of the Fund and four other persons nominated by the Board.

(4) The Fund's bank accounts shall be submitted to the Auditor-General within three months after the end of each financial year in accordance with the Act and Public Audit Act.

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Overdrawn accounts.

21. The Administrator of the Fund shall ensure that the bank accounts of the Fund are not overdrawn.

Expenditure and commitments of the Fund.

22. (1) The Administrator of the Fund shall ensure that in any financial year, the expenditure and commitments of the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from the previous year.

(2) The initial capital of the Fund shall be as appropriated by the National Assembly

Withdrawals from the Fund.

23. (1) Withdrawal from the Fund shall only be to promote the objects for which the Fund is established.

(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the Act and Regulations made thereunder.

Investment of surplus funds.

24. The Board may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities.

Annual estimates.

25. (1) At least three months before the commencement of each financial year, the Board shall prepare estimates of the revenue and expenditure of the Fund for that year.

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

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) amounts of money for the administrative expenses of the Fund;
- (c) the payment of allowances and other charges in respect of the staff seconded to the Fund and members of the Board, where applicable; and
- (d) the maintenance of the assets, equipment, and properties of the Fund.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

Annual reports.

26. The Administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and submit them to the Board for consideration and advice.

Records of the Fund.

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

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

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

(3) The financial statements prepared under sub-regulation (2) shall be prepared in accordance with the format prescribed by the Public Sector Accounting Standards Board.

Financial and Procurement Regulations.

28. The Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable.

PART VI—GENERAL PROVISIONS

Administrative expenses.

29. The administrative expenses of the Fund shall not exceed three per cent of the approved budget of each financial year.

Review of the performance of the Fund.

30. (1) The Board shall, at the end of three years from the date of the commencement of these Regulations, and thereafter, every three years, cause a review to be undertaken on the performance of the Fund.

(2) The review under sub-regulation (1) shall be to determine whether the Fund has met the objectives for which the Fund was established.

(3) The report on the review of the Fund shall be submitted to the Cabinet Secretary for consideration and further guidance.

Winding up of the Fund.
L.N. 34/2015.

31. (1) The winding up of the Fund shall be in accordance with the provisions of the Public Finance Management (National Government) Regulations, 2015.

(2) On winding up of the Fund —

(a) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;

(b) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly;

(c) assets other than cash of the Fund shall be transferred to the Office of the Director of Public Prosecutions;

(3) The Cabinet Secretary shall submit a final statement of accounts to the National Assembly and the Auditor-General for audit within six months from the date of the decision to wind up the Fund.

Made on the 8/10/2024.



Hon. CPA John Mbadi Ng'ongo, EGH,
Cabinet Secretary for the National Treasury and Economic Planning.