

LEGAL NOTICE NO. 138

THE TAX PROCEDURES ACT, 2015

(No. 29 of 2015)

IN EXERCISE of the powers conferred by section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

1. These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations, 2018.

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

“Committee” means the Tax Agent Committee established under regulation 7;

“misconduct” includes making false tax declarations, aiding and abetting tax evasion and any conduct prohibited by any law relating to the collection of tax;

“practicing certificate” means a certificate issued to a person by a recognized professional association which permits that person to practice that profession;

“registration certificate” means the certificate issued by the Commissioner under regulation 3; and

“tax agent” means a person registered by the Commissioner as a tax agent under regulation 3.

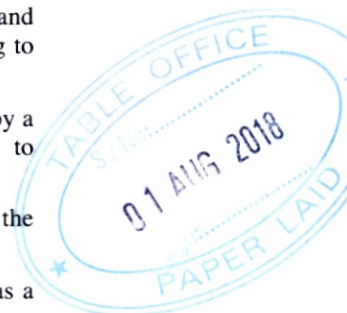
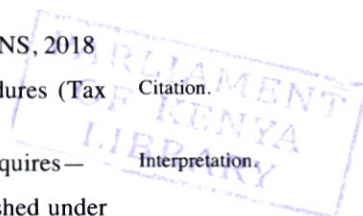
3. (1) A person who wishes to act as a tax agent shall apply in writing to the Commissioner for registration.

(2) An application made under subregulation (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

(3) The Commissioner may register a person as a tax agent if that person is tax compliant and—

- (a) is a member of the Institute of Certified Public Accountants of Kenya;
- (b) is an advocate of the High Court of Kenya and holds a current practicing certificate;
- (c) is a former tax administrator with at least ten years’ experience in tax administration; or
- (d) is a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent.

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Registration of tax agent.

(4) Where the Commissioner is satisfied that a person is qualified for registration as a tax agent, the Commissioner shall issue a certificate of registration in the prescribed form

(5) These Regulations shall not apply to a non-resident who is temporarily in Kenya for the sole purpose of representing a client on tax matters

4. The functions of a tax agent shall be to—

Functions of tax agents

- (a) prepare and submit tax returns on behalf of a taxpayer,
- (b) liaise with the Kenya Revenue Authority on behalf of a taxpayer on matters relating to tax,
- (c) advise and represent a taxpayer in matters relating to tax before the Commissioner or the Tribunal established under the Tax Appeals Tribunal Act, 2013; and
- (d) deal with any other matters that relate to tax on behalf of a taxpayer

Act No 40 of 2013

5 (1) The Commissioner shall maintain a register of tax agents which shall contain—

Register for tax agents

- (a) the names of all tax agents;
- (b) the qualifications of the tax agents,
- (c) the address of the principal places of business of the tax agents and any other place where the tax agents may operate from, and
- (d) such other information as the Commissioner may consider necessary

(2) A tax agent shall notify the Commissioner of any change in the information in the register within fourteen days of such change

6 (1) A tax agent shall act in a professional manner in providing service to his or her clients to enable them to comply with the requirements of any tax law

Conduct of tax agent

2. Without prejudice to the foregoing, a tax agent shall—

- (a) comply with any notice served on the tax agent by the Commissioner within the period specified in the notice,
- (b) maintain a register containing the following details—
 - (i) the names of all the clients,
 - (ii) the date of engagement by each client,
 - (iii) the physical addresses, postal addresses and any other contact details of each client, and
 - (iv) information relating to the nature of the business that each client is engaged in, and
- (c) maintain proper records indicating—

- (i) the date when the last income tax return or specified notice was submitted to the Commissioner;
- (ii) the tax payable or paid; and
- (iii) such other particulars as the Commissioner may from time to time direct.

7. (1) The Cabinet Secretary shall, for the purpose of these Regulations, appoint by notice in the *Gazette*, a Tax Agent Committee which shall consider applications for registration of tax agents and investigate any allegations of misconduct made against tax agents.

Establishment of the Tax Agents Committee.

(2) The Committee shall comprise of—

- (a) a chairperson who shall be from the private sector with at least ten years' relevant experience and holds a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya;
- (b) a representative of the Institute of Certified Public Accountants of Kenya;
- (c) a representative of the Law Society of Kenya;
- (d) three other persons who have at least five years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya; and
- (e) a representative of the Commissioner, who shall be the secretary to the Committee.

(3) The members of the Committee shall serve for a term not exceeding three years and shall be eligible for re-appointment for one further term not exceeding three years.

(4) The quorum for a meeting of the Committee shall be the chairperson and two others members.

(5) The Chairperson shall preside at every meeting of the Committee at which the chairperson is present and in the absence of the Chairperson, the members present shall appoint one of their number to preside over the meeting.

(6) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may determine from time to time.

8. The office of the chairperson or a member of the Committee shall become vacant if the holder—

Vacancy.

- (a) resigns by notice in writing to the Cabinet Secretary;
- (b) is convicted of any offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to meet his or her tax obligations; or
- (e) fails to attend three consecutive meetings without notice to the chairperson or in case of the chairperson to the Commissioner.



9 (1) The Commissioner shall, upon receiving any allegation of misconduct against a tax agent, refer the matter to the Committee to investigate the allegation

Investigation of
allegations of
misconduct

(2) Where the complaint is against a member of a recognized professional association, the Committee may refer the matter to the association for investigation and determination in accordance with the code of conduct of that association

(3) The Committee may recommend such disciplinary or similar action as it may consider necessary be taken against the tax agent in addition to the action taken by the association

(4) Where the complaint is against a person who is not a member of a recognized professional association, the Committee shall give the tax agent an opportunity to be heard and permit the tax agent to inspect any relevant documents related to the allegation at least seven days before the date of the hearing

(5) The Committee may, in the course of the investigations, hear such witnesses and receive such documentary evidence as may, in its opinion, assist in the investigation

(6) The Committee shall, expeditiously, but not later than seven days after the conclusion of the investigation, submit a report to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent,
- (c) suspends the registration of the tax agent,
- (d) deregisters the tax agent, or
- (e) takes such other action that the Commissioner may consider appropriate

(7) The Commissioner shall, within fourteen days of receiving the report of the Committee, take such action as may be appropriate

10 Any person who—

Offences

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into the register maintained for the purposes of these Regulations, or any copy thereof,
- (b) fraudulently procures or attempts to procure, registration as a tax agent;
- (c) knowingly and willfully makes any statement which is false or which is misleading, with a view to gaining any advantage, concession or privilege under these Regulations, or
- (d) operates as a tax agent without being registered,

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or both

Dated the 14th June, 2018

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning

LEGAL NOTICE NO. 139

THE RETIREMENT BENEFITS ACT, 1997

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997 the Cabinet Secretary for the National Treasury and Planning makes the following Regulations-

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2018.

Citation.

2. Regulation 3 of the Retirement Benefits (Occupational Retirement Benefits Schemes), 2000 (in these Regulations referred to as the "principal Regulations") is amended by inserting the following definition in its proper alphabetical sequence—

L.N. 119/2000.

"medical fund" means a fund into which all contributions, investment earnings, income and all other moneys payable under the scheme rules or the provisions of this Act and subsidiary Regulations shall be paid for the purposes of accessing medical benefits in retirement.

3. Regulation 8 of the principal Regulations is amended by adding the following new paragraph immediately after paragraph (4)—

(5) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

4. Regulation 25 of the principal Regulations is amended—

(a) by deleting paragraph (a) of the provision to paragraph (1) and substituting therefor the following new paragraph—

(a) subject to the amount not exceeding ten percent of the total accrued benefits transferred to a medical fund, not more than one-quarter of the remaining retirement benefits may be commuted in a scheme where members do not make contributions and not more than one-third of the remaining retirement benefits may be commuted in a scheme where members make contributions;

(b) by deleting paragraph (6) and substituting therefor the following paragraph—

(6) The scheme rules may provide for the payment of retirement benefit by way of an income draw down, as an alternative or in addition to the purchase of annuity for members at retirement age:

Provided that the scheme members shall take a minimum period of ten years.

5. Regulation 39 of the principal Regulations is amended—

- (a) in paragraph (1), by deleting the expression “three months” and substituting therefor the expression “four months”; and
- (b) in paragraph (3), by inserting the words “less the amount of the medical fund” at the end of subparagraph (a) of the proviso.

Dated the 14th June, 2018.

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

LEGAL NOTICE NO. 140

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS, 2018

1. These Regulations may be cited as the Public Finance Management (Tourism Promotion Fund) Regulations, 2018.

Citation.

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

Interpretation.

“Board” means the Oversight Board established under regulation 17;

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

“Fund” means the Tourism Promotion Fund established under regulation 3 of these Regulations;

“Officer Administering the Fund” means the Principal Secretary for the time being responsible for matters relating to tourism;

“operational and maintenance expenses” means moneys included in the approved annual budget of the Fund dedicated to meeting the routine administrative expenses of the Secretariat;

“plugging projects” means projects which support the development, promotion and branding of tourism in Kenya;

“tourism events” means natural phenomena or human scheduled activity which attract visitors to a particular area as organizers, participants, spectators or service providers to support the activity or a combination of several purpose of engagement, including wildebeest migration, observation of eclipse, exhibition, conferences, sporting events, cultural festivals and dances;

“tourism implementing agency” means a government agency involved in the development, promotion and branding of tourism in Kenya;

“tourism niche product” means an attraction, good or service of special appeal and of specific interest to a particular market segment,

“tourism product” means an attraction, good or service which contributes to the total visitor or tourist experience in a destination, including wildlife, culture, rivers, beaches, historical sites, museums, hotels and artifacts

3 There is established a fund to be known as the Tourism Promotion Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act

Establishment of the Fund

4 The initial capital of the Fund shall be 200 million shillings appropriated by Parliament in the financial year 2018/19

Capital of the Fund

5 (1) The object and purpose of the Fund shall be to provide funds to support development, promotion and branding of tourism sector

Object and purpose

(2) Without prejudice to the generality of paragraph (1) of this regulation, the Fund shall provide for—

- (a) financing development, promotion and branding programmes and initiatives in relation to tourism products, including tourism niche products and tourism events,
- (b) financing development, promotion and branding of Kenya in specific local, regional and international market segments,
- (c) financing tourism data capture, analysis and dissemination of the same and any other related research which may include deployment of technology based applications,
- (d) financing development of tourism facilities and establishments in areas where the private sector is unable or unwilling to develop, but with a high potential for tourism promotion and branding,
- (e) co-financing of tourism promotion projects with the county governments on the basis of an agreed ratio of matching grants,
- (f) funding programmes and initiatives for tourism safety and security geared towards development, promotion and branding of tourism sector,
- (g) financing development of innovations and inventions which promote tourism development, promotion and branding,
- (h) funding of plugging projects which contribute to development, promotion and branding of tourism sector,
- (i) financing programmes and initiatives geared towards tourism intelligence and information gathering for purposes of developing, promoting and branding tourism in Kenya, and
- (j) standard development and capacity building in the tourism sector

6 The Fund shall consist of— Sources of funds

- (a) proceeds realised under section 3 of the Air Passengers Service Charge Act; Cap 475
- (b) moneys appropriated by the National Assembly for the purpose of the Fund,
- (c) income from investments of any surplus funds in the Fund,
- (d) interest accruing to the Fund,
- (e) grants, donations or other bequests made to the Fund,
- (f) moneys paid into the Fund from any other source as may from time to time be approved by the Cabinet Secretary, and
- (g) any other moneys as may be provided for in an Act of Parliament

7 (1) There shall be paid out of the Fund monies in respect of any expenses incurred in pursuant of the objects and purposes for which the Fund is established Payment out of the Fund

(2) The expenditure incurred out of the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Officer Administering 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 of any cost estimate, shall be referred to the Board for approval

8 The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established Retention of funds

9 A tourism implementing agency shall be eligible to apply for funding from the Fund if— Funding eligibility criteria

- (a) in the case of a state corporation or a government agency—
 - (i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium term plan approved by the governing body of the state corporation or agency,
 - (ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, and
 - (iii) meets any other criteria set out by the Board
- (b) in case of a Ministry or a State Department, that Ministry or State Department —
 - (i) has an annual work programme aligned to the strategic plan of the Ministry or state department and the medium term plan approved by the Cabinet Secretary responsible for that Ministry or State Department,

(ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, and

(iii) meets any other criteria set out by the Board

10 (1) The Officer Administering the Fund shall by the 30th August of each year issue a budget circular to the eligible persons indicating—

Procedure for
funding

- (a) the ceilings for funding each objects of the Fund,
- (b) priority programmes, projects and activities to be funded in that financial year, and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 9 shall at least, six months before the commencement of a financial year, apply to the Officer Administering the Fund in such a manner as may be specified by the Board

(3) An application for funding under paragraph (2) shall be accompanied by—

- (a) in case of a state corporation or government agency—
 - (i) the minutes of a properly constituted meeting of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund,
 - (ii) an annual work programme aligned to the strategic plan of the state corporation or government agency approved by the governing body of that corporation or agency and the Medium Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency,
 - (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable,
 - (iv) a statutory declaration of programmes funded through other sources, if any,
 - (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channeled, and
 - (vi) any other additional information as may be required by the Board

(c) in the case of a Ministry or State Department —

- (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan,
- (ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity,
- (iii) where it is an infrastructure development project, the project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable,
- (iv) an accounting officers' declaration of programmes funded through other sources, if any,
- (v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channeled; and
- (vi) any other additional information as may be required by the Board

(3) A maximum of ten per centum (10%) of the approved budget for each financial year shall be allocated annually by the Board, with the approval of the Cabinet Secretary for the time being responsible for matters relating to tourism based on the Medium Term Plan of that Ministry and the Cabinet Secretary for the National Treasury, to implement strategic interventions, programmes and initiatives through a tourism implementing agency

11 (1) The funds shall only be disbursed if—

Conditions for
disbursements of
funds

- (a) the disbursement is approved and recorded in minutes of the Board; and
- (b) the disbursement is to meet the expenses related to the objects and purpose of the Fund

(2) The Board may set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources

(3) Moneys may additionally be disbursed out of the Fund where such disbursements—

- (a) relate to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act, and

- (b) have been approved by the Officer Administering the Fund and submitted to the Board for further approval

(4) For purposes of paragraph (3) of this regulation, a supplementary budget shall be prepared by the Officer Administering the Fund and approved in accordance with the provisions of regulation 10, provided disbursement under the supplementary budget complies with the requirements of these Regulations

12 (1) A recipient of the funds shall—

Obligations of the recipient of funds

- (a) submit quarterly and annual progress reports of the programmes, projects and initiatives funded by the Fund; and
 (b) allow staff of the secretariat to monitor and evaluate programmes, projects and initiatives funded by the Fund

(2) A recipient of the funds shall return any unutilized funds disbursed in accordance with these Regulations where—

- (a) the purpose for which the funds were disbursed was not undertaken,
 (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized, or
 (c) savings are realized as a result of change in circumstances

(3) Unutilized funds returned under paragraph (2) shall be recorded as receipts of the Fund

(4) A recipient of the funds who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until that person has fully complied with the provisions of these Regulations

13 A tourism implementing agency shall only request for payments from the Fund where—

Request for payment from the Fund

- (a) the project to be financed is procured in accordance with the Public Procurement and Asset Disposal Act, 2015.
 (b) the project to be financed is included in the approved estimates of revenue and expenditure for the tourism implementing agency; and
 (c) the requirements of regulation 27 are met

No 33 of 2015

14 The Officer Administering the Fund may withhold payments due and owing to a tourism implementing agency where—

Withholding of payments

- (a) that tourism implementing agency fails to comply with the provisions of regulation 12,
 (b) the Officer Administering the Fund is of the opinion that the provisions of these Regulations have not been complied with, or

- (c) a tourism implementing agency provides information justifying the proposed withholding with approval of the agency governing body, and the Board approves the withholding

15 The Board, with the prior approval of the Cabinet Secretary for the time being responsible for matters relating to tourism and the Cabinet Secretary to the National Treasury, may—

Imposition of sanctions

- (a) impose such penalties, including the suspension of funding allocations, as it may direct the tourism implementing agencies which fail to comply with any of the provisions under these Regulations, or
- (b) take such remedial, supplementary or alternative measures to ensure the performance of the functions of tourism implementing agencies which persistently fail to discharge their functions under these Regulations

16 (1) Applications for payment out of the Fund shall be made by a tourism implementing agency in a format specified by the Board at least twenty-one (21) days before the due date

Applications for payments out of the fund

(2) Any applications for payment made under paragraph (1) of this regulation shall be supported by documents required under these Regulations which shall include—

- (a) the name and address of the payee (tourism implementing agency),
- (b) the bank account details of the payee,
- (c) specific project to be financed, and
- (d) any other additional information as may be deemed necessary by the tourism implementing agency

(3) Any application under these Regulations shall be signed by an accounting officer or the chief executive officer of a tourism implementing agency or an officer delegated by him or her, in writing.

17 (1) There is established a board to be known as Oversight Board for the Fund which shall consist of—

Establishment and composition of the Board

- (a) the Cabinet Secretary responsible for matters relating to tourism, who shall be the chairperson of the Board, or in his or her absence, the Principal Secretary responsible for matters relating to tourism,
- (b) the Principal Secretary responsible for matters relating to tourism,
- (c) the Principal Secretary responsible for matters relating to finance,
- (d) the Principal Secretary responsible for matters relating to Transport,
- (e) the Principal Secretary responsible for matters relating to Culture,

- (f) the Principal Secretary responsible for matters relating to wildlife,
- (g) the Principal Secretary responsible for matters relating to Internal Security,
- (h) two persons of opposite gender appointed by the Cabinet Secretary responsible for matters relating to tourism in accordance with Article 27 of the Constitution

(2) A person shall not be appointed under paragraph (1) (h) of this regulation, unless that—

- (a) holds a university degree recognized in Kenya,
- (b) has not less than fifteen years' experience in the relevant field, and
- (c) meets the requirements of Chapter Six of the Constitution

(3) A person appointed under paragraph (1)(h) of this regulation shall serve for a period of three (3) years, and the period may be renewed for a further final term of three (3) years

18 The functions of the Board shall be to—

Functions of the Board

- (a) advise the Cabinet Secretary on the funding requirements of the Fund,
- (b) review and adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for matters relating to tourism for concurrence and onward transmission to the Cabinet Secretary for approval,
- (c) determine the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya,
- (d) ensure that the annual estimates of revenue and expenditure for the Fund include retention funds for the preceding financial year which shall be revoted,
- (e) ensure that only projects included in the tourism implementing agency annual programme are promoted for funding under these Regulations,
- (f) advise the Cabinet Secretary on amounts and timing for the fund transfers into the Fund,
- (g) approve and review the investment of surplus funds from the Fund;
- (h) advise the Cabinet Secretary on any additional sources of funds for the Fund,
- (i) approve the financial statements prepared by the Officer Administering the Fund before submission to the Auditor-General, and

- (j) approve the non-financial reports of the Fund before submitting them to the Cabinet Secretary responsible for tourism for onward transmission to the National Treasury

19 (1) The Board shall, through a competitive recruitment process, identify and shortlist three successful persons in order of merit and forward the names to the Cabinet Secretary for the time being responsible for matters relating to tourism to appoint one of them to be the Chief Executive Officer of the Fund

Appointment of
chief executive
officer

(2) A person shall not be qualified for appointment as the chief executive officer under paragraph (1) unless that person—

- (a) holds at least a degree from a university recognized in Kenya in the field of tourism, wildlife, economics, finance, natural resources or any other relevant field,
- (b) has at least ten years practical experience in senior management capacity, and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The chief executive officer of the Fund shall hold office for a term of three years, but shall be eligible for re-appointment for one further term of three years

(4) The chief executive officer shall be the Secretary to the Board and shall be responsible for the day to day running of the Fund including the staff of the secretariat of the Fund

20 (1) The Principal Secretary responsible for matters relating to tourism shall be the Officer Administering the Fund

Officer
Administering the
Fund

(2) The functions of the Officer Administering the Fund shall be to—

- (a) supervise and control the administration of the Fund based on a five year tourism investment programme approved by the Cabinet Secretary for tourism and the Cabinet Secretary for the National Treasury;
- (b) recommend the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya,
- (c) prepare estimates of annual revenue and expenditure of the Fund relating to its purpose and object and operational and maintenance expenses and submit it to the Board for approval,
- (d) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations,
- (e) advise and consult the Board on matters relating to the administration of the Fund,
- (f) co-ordinate monitoring and evaluation of tourism development, promotion and branding projects financed from the Fund,

- (g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary,
 - (h) keep proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund and submit them to the Board,
 - (i) keep custody of the Funds' assets, equipment and properties under the Fund,
 - (j) prepare financial and non-financial performance report of the Fund and submit it to the Board for approval, and upon approval transmit a copy to the National Treasury and Ministry for matters relating to tourism;
 - (k) prepare the annual financial statements and submit them to the Board for approval before submission to the Auditor-General with a copy to the National Treasury and Ministry for matters relating to tourism,
 - (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General; and
 - (m) undertake any other duty as the Board may assign through resolutions
- (3) When discharging the functions under paragraph (2) of this regulation, the Officer Administering the Fund shall—
- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund, and
 - (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval

21 The Officer Administering the Fund shall have power to—

Powers of Officer
Administering the
Fund

- (a) access any project related data he or she may need from tourism implementing agency in furtherance of his or her functions,
- (b) call for any additional information with respect to requests for payments out of the Fund; and
- (c) cause for a monitoring and evaluation exercise to be done to a tourism implementing agency projects funded from the Fund, and with the approval of the Board

22 (1) The Board shall designate a secretariat to support the operations of the Fund which shall be headed by the Chief Executive Officer

Secretariat
support for
Officer
Administering the
Fund

(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to

tourism may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations

23. (1) The Officer Administering the Fund shall cause an account in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with section 28 of the Act and any Regulations made thereunder

Accounts of the Fund

(2) All monies payable into the Fund shall be received into the bank account of the Fund

(3) The Fund's accounts shall be operated by the Officer Administering the Fund and two other persons nominated by the Cabinet Secretary from the Fund's secretariat

(4) The Officer Administering the Fund may open and maintain other accounts for the following purposes—

- (a) payments for development, promotion and branding of tourism sector;
- (b) payments of operational and maintenance expenses; and
- (c) receiving receipts of the Fund and unutilized funds by tourism implementing agencies.

24. The Officer Administering the Fund shall ensure the accounts of the Fund are not overdrawn

Overdrawn accounts

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

Advances to the Board

(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Board and the Fund, the Cabinet Secretary to the National Treasury may, with the approval of Parliament, make advances to the Board and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary to the National Treasury may determine

Provided that any such advance shall be repaid from the income of the Fund

26 The Board may with the consent of the Cabinet Secretary to the National Treasury and the Cabinet Secretary responsible for matters relating to tourism, invest any of its surplus funds in Government securities

Investments of the funds

27 The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable.

Financial and procurement Regulations

28 (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be

Review of performance of the Fund

conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder

(2) The review shall determine whether the Fund has met the objectives for which it was established

(3) The report on the review shall be submitted to the Cabinet and Parliament for approval

29 (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year

Annual estimates

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from 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) moneys allocated to tourism implementing agencies under these Regulations;
- (c) monies for the administration expenses of the Fund,
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Board, where applicable;
- (e) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable, and
- (f) the proper maintenance of the assets, equipment and properties under 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 and thereafter, the Board shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

30 (1) The Officer Administering the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit it to the Board for approval

Quarterly reports

(2) Upon approval, under paragraph (1), the Officer Administering the Fund shall submit the report to the National Treasury and Ministry responsible for matters relating to tourism

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

Accounts and audit

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, 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 paragraph (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.

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

(5) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.

No. 34 of 2015.

32. (1) The administrative expenses of the Fund shall not exceed three per centum of the approved budget of each financial year.

Administration expenses.

(2) Despite the provisions of paragraph (1), the Board may, with the concurrence of the Cabinet Secretary for the time being responsible for matters relating to tourism, recommend increase of the administrative expenses from three per centum to five per centum where there are justifiable reasons to the Cabinet Secretary for approval for that particular financial year.

33. 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, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

34. (1) The Cabinet Secretary may wind-up the Fund with the approval of the National Assembly where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created.

Winding-up of the Fund.

(2) On winding up of the Fund —

- (a) the officer Administering the Fund shall call on the tourism implementing agencies to submit any valid outstanding obligations and commitments for payment;
- (b) the Officer Administering the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) 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; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to tourism.

(3) Within three months upon the decision to wind up the Fund, the Officer Administering the Fund shall prepare final financial and

non-financial statements of the Fund and submit them to the Board for approval

(4) Upon approval under paragraph (3), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary

(5) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund

Dated the 14th June, 2018

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning

LEGAL NOTICE NO 141

THE PUBLIC FINANCE MANAGEMENT ACT

(No 18 of 2012)

IN EXERCISE of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) REGULATIONS, 2018

1 These Regulations may be cited as the Public Finance Management (National Government) (Amendment) Regulations, 2018

2. The Public Finance Management (National Government) Regulations, 2015 are amended in regulation 219 by deleting paragraph (2) and inserting the following new paragraphs immediately after paragraph (1)—

LN 34/2015

(2) A regulatory authority established by an Act of Parliament and referred to under regulation 211 (4) shall remit to the Collector ninety per centum of its surplus funds not later than thirty days after it is reported in the audited financial statements after the end of each financial year

(2A) For the purpose of this regulation, “Collector” means the Commissioner General appointed under section 11 of the Kenya Revenue Authority Act, 1995

No 2 of 1995

Dated the 14th June, 2018

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning

LEGAL NOTICE NO. 142

THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING ACT, 2009

(No. 9 of 2009)

IN EXERCISE of the powers conferred by section 134 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations-

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
(AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Amendment) Regulations, 2018.

Citation.

2. The Proceeds of Crime and Anti-Money Laundering Regulations, 2013 (in these Regulations referred to as the "principal Regulations") are amended by inserting the following new regulation immediately after regulation 2 –

L.N. 59/2013.

Application.

2A. These Regulations shall apply to all preventive measures that apply to anti-money laundering activities including measures for combating terrorism financing.

3. The principal Regulations are amended by inserting the following new regulation immediately after regulation 7 –

Policies and procedures.

7A. (1) A reporting institution shall have policies and procedures to address any money laundering or terrorism financing risks associated with non-face-to-face business relationships or transactions.

(2) The policies and procedures referred to in paragraph (1) shall apply when establishing customer relationships and when conducting on-going due diligence.

Dated the 14th June, 2018.

HENRY ROTICH,

Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 143

THE AIR PASSENGER SERVICE CHARGE ACT

(Cap. 475)

IN EXERCISE of the powers conferred by section 3(3) of the Air Passenger Service Charge Act, the Cabinet Secretary for the National Treasury and Planning makes the following Order—

**THE AIR PASSENGER SERVICE CHARGE ACT
(APPORTIONMENT) ORDER 2018**

1. This Order may be referred to as the Air Passenger Service Charge (Apportionment) Order 2018.

2. The proceeds of the charge collected under section 3(1) of the Act shall be apportioned among the Kenya Airports Authority, the Kenya Civil Aviation Authority and the Tourism Promotion Fund as follows –

- (a) in the case of the charge collected under paragraph (a) –
 - (i) sixty percent thereof to the Kenya Airports Authority,
 - (ii) twenty percent to the Kenya Civil Aviation Authority and
 - (iii) twenty percent to the Tourism Promotion Fund; and
- (b) in the case of the charge collected under paragraph (b) –
 - (i) fifty percent thereof to the Kenya Airports Authority;
 - (ii) thirty percent to the Kenya Civil Aviation Authority, and
 - (iii) twenty percent to the Tourism Promotion Fund.

Dated the 14th June, 2018.

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

LEGAL NOTICE NO. 144

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997 the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2018

1. These Regulations may be cited as the Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2018.

Citation.

2. Regulation 9 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 (in these Regulations referred to as the “principal Regulations”) is amended by adding the following new paragraph immediately after paragraph (4)—

L.N. 118/2000.

(6) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

3. Regulation 15 of the principal Regulations is amended by inserting the following paragraphs immediately after paragraph (1)–

(1A) A scheme shall allow for additional voluntary contributions by a member in respect of funding of a medical fund to be accessed at retirement:

Provided that the funds shall be segregated and invested as per the investment policy of the fund for this purpose.

(1B) The scheme rules shall provide that a member may transfer a portion of the member's benefits to a medical cover provider where the member has been unable to build a sufficient post-retirement medical fund from additional contributions.

4. Regulation 32 of the principal Regulations is amended–

- (a) in paragraph (1), by deleting the expression “six months” and substituting therefor the expression “four months”; and
- (b) in paragraph (3), by inserting the words “less the amount of the medical fund” at the end of subparagraph (a) of the proviso.

Dated the 14th June, 2018.

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

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