

LIB.
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(Legislative Supplement No. 38)

LEGAL NOTICE NO. 117

THE EXCHEQUER AND AUDIT ACT

(Cap. 412)

IN EXERCISE of the powers conferred by section 34 (1) of the Exchequer and Audit Act, the Minister for Finance makes the following Regulations:—

THE EXCHEQUER AND AUDIT (PARLIAMENTARY MORTGAGE SCHEME FUND) REGULATIONS, 2002

1. These Regulations may be cited as the Parliamentary Mortgage Scheme Fund Regulations, 2002.

Citation and Commencement.

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

Interpretation.

“borrower” means a person in receipt of a loan out of the Fund;

“Commission” means the Parliamentary Service Commission established under the Parliamentary Service Act;

No. 10 of 2000.

“Committee” means the Loans Management Committee within the meaning of Regulation 6;

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

“Member” means a member of the National Assembly and includes a member of staff of the Commission;

“Officer Administering the Fund” means the Clerk of National Assembly;

“Fund” means the Parliamentary Mortgage Scheme Fund of that name established under section 3 of these regulations;

“staff” means an employee of the Parliamentary Service Commission who is on permanent and pensionable terms of service;

“valuer” means a person registered as a valuer under the Valuers Act.

Cap. 532.

3. There is hereby established a Fund to be known as the Parliamentary Mortgage Scheme Fund.

Establishment.

4. The objective of the Fund shall be to provide a loan scheme for the purchase of residential property by members.

Objective.

5. (1) The initial capital of the Fund shall be the sum of ninety million shillings (KSh. 90 million) which shall be paid out of the Vote of National Assembly for the year 2001/2002.

Capital of the Fund.



(2) An additional capital of KSh. 410 million shall be appropriated in the subsequent financial years so as to raise the total capital to KSh. 500 million (Five hundred million shillings).

(3) All the monies of the Fund shall be paid into an account operated by the Officer administering the Fund or a mortgage institution appointed under these Regulations.

Management of the Fund

6. (1) The administration of the Fund shall be carried out by the Loans Management Committee.

(2) The Loans Management Committee shall comprise—

- (a) the vice-chairman of the Commission who shall be the chairman;
- (b) the chairman of the Member's Welfare Sub-Committee of the National Assembly;
- (c) the Government Chief Whip;
- (d) the Opposition Chief Whip;
- (e) the chairman of Staff Welfare Sub-Committee of the National Assembly; and
- (f) the Clerk of the National Assembly;
- (g) a representative of the Ministry of Finance;
- (h) a representative of the Attorney-General.

(3) The responsibilities of the Loans Management Committee shall be to—

- (a) process applications for loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the housing company (if any) to set up a revolving fund for the disbursement of the loans; and
- (c) to supervise the day-to-day running of the Fund.

(4) The Committee shall meet at least once every three months and at such other times as may be necessary for the discharge of its duties.

(5) The quorum for a meeting of the Committee shall be the Chairman and any three members.

Commission may appoint Mortgage institution

7. Notwithstanding Regulation 6 (3), the Commission may if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

8. (1) A member who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Committee may prescribe.

(2) A loan obtained under these Regulations shall be for the purchase or development of residential property for the occupation of the applicant and his immediate family:

Provided that a loan for development of residential property may be granted at the discretion of the Committee to a member who is in possession of a title deed to the land on which the development is intended to be carried out.

9. Where a loan is granted for the development of residential property, the same shall be released to the applicant in phases as follows:—

Disbursement of loans for development.

- (a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and
- (b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate:—

The application.

- (a) copies of the designs of the proposed residential property duly approved by the local authority within whose area it is to be situated;
- (b) bills of quantities in respect of the proposed development;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall deposit with the Fund all monies payable as stamp duty and other legal fees, and all transactions in respect of the property shall be conducted by an advocate appointed by the Commission.

11. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least forty-five (45) years beyond the final loan repayment date.

Leasehold property.

12. (1) The maximum loan to be granted under these Regulations to a member of the National Assembly shall be a sum equivalent to one third of the member's net emoluments at the time of application multiplied by the number of years remaining for the life of that Parliament but, repayable in a maximum of forty-eight (48) months:

Maximum Loan Disbursement.

Provided that:

(a) A loan granted under these Regulations shall not exceed KSh. 6,000,000 (Kenya shillings six million).

(b) The last twelve months of the final year of the life of Parliament shall not be taken into account when working out the remaining life of Parliament as the same shall be considered as an election year.

(2) A member of the National Assembly shall be required to give

prior authority in writing for his pension dues to be utilized to clear any outstanding debt in case he loses his parliamentary seat before fully repaying the loan.

(3) (a) The maximum loan entitlement for a member of staff of the Commission shall be equivalent to a maximum of ten (10) years' house allowance payable to him, but subject to the number of years of service remaining before retirement or the cost of the property, whichever is less:

Provided that such maximum amount shall not exceed KSh. 4,000,000 million (Kenya shillings four million).

(b) For a member of staff to qualify for a loan such member shall be on permanent and pensionable terms of service and have served for a period of more than five (5) years.

(4) A loan granted to a borrower under these Regulations shall be funded at the rate of—

(a) ninety percentum (90%) of the value of the property, where such property is situated in Nairobi; and

(b) eighty percentum (80%) of such value where the property is situated in any other area,

and the borrower shall be required to deposit the balance thereof with the Fund.

Repayment.

13. A loan granted under these Regulations shall be repayable—

(a) within a period of fifteen years or the remaining period of service of the borrower, whichever is less, for a member of staff; and

(b) within a maximum period of fifty-four (54) months for a member of Parliament, provided that the loan shall be fully paid on or before six months to the end of that Parliament.

Interest.

14. (1) The interest chargeable on a loan shall be three percentum (3%) per annum on a monthly reducing balance and may be revised from time to time at the discretion of the Commission.

(2) A mortgage institution appointed under Regulation 7 to administer the Fund shall be allowed to charge an interest of not more than four percentum (4%) to cover management costs.

(3) The interest charged under paragraphs (1) and (2) above shall be met by the borrower.

Lien.

15. (1) The Commission shall have a charge registered on the property financed through a loan granted under these regulations and shall be entitled to have its name entered in all documents of title for such property.

(a) not mortgage, charge, surrender the lease, or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Commission; and

- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Commission.
 - (c) provide a transfer deed duly signed by the borrower and a letter authorizing the Commission to sell the property in case of default in payment.
- (3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Commission.
- (4) During the loan repayment period, every borrower shall—
- (a) ensure that the property is used for residential purposes only;
 - (b) maintain the property in a satisfactory state of repair; and
 - (c) not alter or make any structural alteration to the property, carry out any valuation, assessment, or investigation relating to the property or the title thereto, as the case may be, without the approval of the Commission.
- (5) The Committee shall not grant two or more concurrent loans to one borrower.
- (6) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Commission, the cost of which shall be paid out of the Fund and debited in such borrower's account.

Mortgage
Insurance.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

(3) The Committee shall be entitled to do everything lawful and necessary to protect its interest in the property in respect of which a loan is granted.

17. (1) The Commission may call in the loan and in default sell by public auction or private treaty the charged property where the borrower is in breach of the terms under the loan agreement or the covenants contained in the charge or mortgage instrument.

Default.

(2) Notwithstanding these regulations, where a borrower ceases to be a Member of the National Assembly or a member of staff of the Commission before repayment in full of a loan, the Commission may, in its discretion, grant such borrower a maximum period of four months in which to redeem the mortgage or convert the same to an ordinary mortgage either in the same company or in any other mortgage institution of his choice:

Provided that monthly repayment as contained in the mortgage instrument shall continue to be made by the borrower during the four-month period.

Administration of
the Fund.

18. (1) The Officer Administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
- (c) cause to be kept books of account and other records in relation to the Fund of all the loans financed from the Fund;
- (d) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, in such details as the Treasury may from time to time direct in accordance with section 18 (2) of the Exchequer and Audit Act; and
- (e) furnish such additional information as may be required for examination and audit by the Controller and Auditor-General in accordance with Section 1 of the Exchequer and Audit Act.

Responsibilities of
Mortgage
Institution.

19. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be—

- (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
- (b) to charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
- (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
- (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and
- (f) upon default, to call in the loan and on behalf of the Commission sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

Miscellaneous.

20. These rules shall be in addition to such rules as may be detailed in the application form supplied by the Commission and the contract between the mortgage institution and the Commission.

Dated the 21st June, 2002.

C. M. OBURE,
Minister for Finance.