



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

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DLPS

Please deal-

*[Handwritten signature]*

10/03/21

5<sup>th</sup> March 2021

REF. NO: ZZ/MOF/32/01 TY

Mr. Michael Sialai, CBS  
Clerk of the National Assembly  
Parliament Building  
NAIROBI

Mr. Jeremiah M. Nyegenye, CBS  
Clerk of the Senate  
Parliament Building  
NAIROBI

Dear *Sialai,*

*② Head, Table office  
To register, case taking  
for reference to committee/draft  
to Comptroller  
Finance to Comptroller  
Treasury. nyegenye's  
11/3/21.  
③ Process. send to  
Clerk of the  
Assembly  
10/3*

**RE: THE PUBLIC FINANCE MANAGEMENT (PUBLIC INVESTMENT MANAGEMENT) REGULATIONS, 2021**

The National Treasury has finalized preparing the Public Finance Management (Public Investment Management) Regulations, 2021 which are intended to ensure public projects are properly appraised before being included in the budget at both levels of Governments. These Regulations prescribe a standardized approach in project cycle management that includes: project identification and conceptual planning; pre-feasibility and feasibility studies; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment. These proposed Regulations will also enhance efficiency and effectiveness in public investment management process in both the National and County Governments and their Agencies in order to meet the country's development agenda.

The PIM Regulations were approved by the Intergovernmental Budget and Economic Council (IBEC) during the 14<sup>th</sup> ordinary session held on 10th February, 2021 and further approved by the Cabinet on 18<sup>th</sup> February, 2021.

*NATIONAL ASSEMBLY RECEIVED 10 MAR 2021 DEPUTY CLERK 30007-00100, NAIROBI*

**NATIONAL ASSEMBLY RECEIVED 10 MAR 2021 CLERK'S OFFICE P. O. Box 30007 NAIROBI**

Towards this end, the National Treasury hereby transmits a copy of the proposed Public Finance Management (Public Investment Management) Regulations, 2021 to the National Assembly and the Senate in order to facilitate the pre-publication scrutiny.

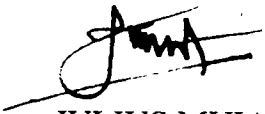
The National Treasury and Planning is therefore proposing to have a joint meeting with the relevant Committees of both National Assembly and the Senate on a date and venue to be determined by Parliament. The Hon. Members of the various Committees will be taken through the proposed Public Finance Management (Public Investment Management) Regulations, 2021.

The purpose of this letter therefore, is to request you to facilitate a joint consultative meeting of the National Assembly and the Senate in order to receive approval from Parliament as provided for under Section 205 of the Public Finance Management Act, 2012.

Your prompt attention and action on this matter will be highly appreciated.

Yours

*Sincerely*



**JULIUS MUIA, PhD CBS**  
**PRINCIPAL SECRETARY/NATIONAL TREASURY**

**ENCL.**

**Copy to: Mr. Justin Muturi, EGH**  
Speaker of the National Assembly  
Parliament Building  
**NAIROBI**

**Mr. Kennedy Lusaka, EGH**  
Speaker of the Senate  
Parliament Building  
**NAIROBI**

**EXPLANATORY MEMORANDUM ON THE PUBLIC FINANCE (PUBLIC INVESTMENT MANAGEMENT) MANAGEMENT REGULATIONS, 2021.**

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**I. The Purpose of Public Investment Management Regulations, 2019**

1. The purpose of these regulations is to provide a framework for efficient and effective public investment management that includes project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment to ensure value for money and optimal use of public resources.
2. In particular, the regulations are intended to achieve the following objectives:
  - a. Provide a standard approach in project cycle management to facilitate the National and County Governments and their entities in the project identification and planning; pre-feasibility and feasibility; selection and budgeting; implementation, monitoring, evaluation and reporting; closure, sustainability and impact assessment of viable projects that meet development needs;
  - b. Establish and maintain a Public Investment Management Information System to inform decision making on Public Investments;

- c. Clarify roles and responsibilities of various institutions in the Public Investment Management processes; and
- d. Enhance transparency, accountability, prudent use of public resources, and public participation.

3. The scope of these regulations shall apply to:

- a. National and County Governments and their entities, including constitutional commissions, independent offices, and state organs when planning and implementing Public Investments.
- b. Public Investment projects whether wholly or partially funded through public finances, irrespective of the source.
- c. Projects considered for implementation through Public Private Partnership arrangements, in so far as the regulations are not in contradiction with the provisions of the Public Private Partnership Act, 2013.
- d. Security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act, 2015 except where expressly included, or if the Cabinet Secretary so directs.

**II. The Legislative Context:**

- 4. Constitution under Article 225 on financial control provides for the establishment and functions of the National Treasury to

ensure both expenditure control and transparency in all governments and establish mechanism to ensure their implementation.

5. These provisions of the Constitution are further expounded in section 12 (1)(e) of the Public Finance Management Act, 2012. The Act gives powers to the Cabinet Secretary responsible for matters relating to finance to design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution, provided that the National Treasury shall prescribe regulations that ensure operations of a system respect and promote the distinctiveness of the national and county levels of government.
6. It is in this context that the **“Public Finance Management (Public Investment Management) Regulations, 2021”** are made to establish the Regulations under PFM Act 2012 that provide mechanism and management structure of the Regulations which is clearly linked to national economic development agenda.
7. The regulatory and institutional framework that will be involved in the Public Investment Management Regulatory process are the following:

**A. Parliament/County Assembly**

- a. Provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided for by the Public Finance Management Act, 2012;
- b. Ensure appropriation for public investments are only for Pipeline Projects.

**B. The Cabinet/County Executive Committee shall:**

- a. Provide strategic leadership and interventions in public investment processes;
- b. Issue policies required for proper, efficient and effective public investment processes; and
- c. Provide necessary approvals, where required.

**C. The National Treasury**

The National Treasury shall have the following main responsibilities, among others, for both National and County Governments and their entities:

- a. Reviewing the Public Investment Management regulations with the approval of the Cabinet and communicate any changes to Accounting Officers in National and County Governments and their entities;
- b. Reviewing the Public Investment Management schedules of these regulations annexed hereto and communicate any changes to Accounting Officers in National and County Governments and their entities;
- c. Overseeing implementation and ensure compliance with these Public Investment Management Regulations;

- d. Formulating, developing and overseeing of public investment management policies;
- e. Designing, developing and maintaining an efficient, effective and reliable Public Investment Management Information System to be used by National and County Governments and their entities;
- f. Building and strengthening the capacity of National and County Governments and their entities on the use of Public Investment Management processes and systems;
- g. Establishing a Public Investment Management Department, which shall be the focal point for public investment management.

**D. The County Treasury shall:**

The County Treasury shall have the following responsibilities:

- a) Establish a Public Investment Management Unit at the County Treasury, which shall be the focal point for public investment management for the County Government;
- b) Review Project Concept Notes for medium, large and mega projects, and recommending whether or not pre-feasibility and feasibility studies should be undertaken;
- c) Reviewing feasibility studies and recommending the projects for inclusion in the Project Pipeline;
- d) Share project analytical reports with the National Treasury during the Intergovernmental Budget and Economic Council for coordination;
- e) Build and strengthen the capacity of County Government and its entities on the use of Public Investment Management processes and systems.

**E. The Department responsible for Planning shall:**

- a) Convene public participation and stakeholder consultation forums in order to identify strategic national and sectoral priorities to be included in national development plans;
- b) Coordinate development of national and sectoral development plans;
- c) issue guidelines to guide the development of National Development Plan, County Integrated Development Plans, Sectoral and Strategic Plans;
- d) Carry out independent mid-term and end term evaluations for medium, large and mega projects on a sample basis in line with schedule 6 of these regulations;
- e) Undertake independent ex-post evaluation of projects on sample basis in accordance to schedule 6 of these regulations;

**F. The Cabinet Secretaries or County Executive Committee Members shall:**

- a) Provide strategic leadership and interventions during implementation of public investments;
- b) Provide policies required for proper, efficient and effective implementation of public investments;
- c) Provide necessary approvals, where required.

**G. An Accounting Officer shall:**

An Accounting Officer shall have the following responsibilities among others;



- a) Approve and facilitate resources necessary for effective implementation of projects.
- b) Be accountable for successful implementation of projects based on key performance indicators.
- c) Build and strengthen the capacity of their respective entities on the use of Public Investment Management processes, tools and techniques.
- d) In order to promote information sharing and coordination in public investment projects in accordance with the Intergovernmental Relations Act 2012:
  - i). Participate in Sector Working Groups in both National and County levels;
  - ii). Submit a status report to the Intergovernmental Budget and Economic Council for coordination on all ongoing and pipelined projects;
  - iii). Constitute joint committees in accordance with Section 23 of the Intergovernmental Relations Act, 2012.
- e) Establish a Project Committee comprising appropriate Officers as detailed in these Regulations.
- f) Receive recommendations from the Project Committee and make appropriate decision.

**H. The Project Committees shall:**

- i. Review project concept notes and make recommendations to the Accounting Officer for decision making within twenty-one days;
- ii. Review project pre-feasibility and feasibility studies and make recommendations to Accounting Officer for decision making;

- iii. Identify the potential project risks and mitigating measures not covered in the Project Concept Note, pre-feasibility or feasibility studies;
- iv. Prioritize projects based on the National Government Ministries Departments and Agencies or County Government Ministries Departments and Agencies Strategic Plan, Medium Term Plan, and national and county development plans;
- v. Recommend the mode of project financing;
- vi. Provide guidance on any changes in the project design;

### **III. Policy Background**

8. The policy foundation for establishing Public Investment Management regulations, is the nation's economic development and employment creation well recognized in Kenya's economic blueprint, the Vision 2030, the economic transformative agenda of the Jubilee Government espoused in 3<sup>rd</sup> Medium Term Plan of Vision 2030 and the 'Big Four' agenda which feeds into the four broad areas namely:

- i. increasing manufacturing share of Gross Domestic Product from 9.2 percent to 15 percent through promoting businesses and enterprises;
- ii. ensuring food security in the country;
- iii. building one (1) million housing units; and
- iv. ensuring 100% health coverage over the next five years.

9. Public Investment Management regulations will enhance efficiency and effectiveness in the planning and implementation of public investment projects being initiated under the 'Big Four' agenda and their enablers.

#### IV. Justification

10. Over the recent past, the Government has been increasing public investments at both levels of Governments. Specifically, in the last five Financial Years period, the Government cumulatively allocated over **Kshs. 4.2 Trillion** development budget to finance public investments projects across the country.

**Development Budgetary allocations for the Past Five Financial Years**

| <b>1. National Government</b> |                |                |                |                |                |                 |
|-------------------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| <b>Financial Years</b>        | <b>2015/16</b> | <b>2016/17</b> | <b>2017/18</b> | <b>2018/19</b> | <b>2019/20</b> | <b>Total</b>    |
| Budget Kshs (Billion)         | 718.47         | 817.29         | 556.35         | 625.72         | 652.35         | <b>3,370.18</b> |
| <b>2. County Government</b>   |                |                |                |                |                |                 |
| Budget Kshs (Billion)         | 158.62         | 158.36         | 139.18         | 185.76         | 187.98         | <b>829.9</b>    |
| <b>Grand Totals</b>           | <b>877.09</b>  | <b>975.65</b>  | <b>695.53</b>  | <b>811.51</b>  | <b>840.33</b>  | <b>4,200.08</b> |

11. While these initiatives have recorded significant socio-economic impact, they have also faced challenges including:

- (i) failure to ensure aggregate public investment spending planned is within realistic resource ceilings and individual public projects are completed within planned budget and schedule;

- (ii) public projects being abandoned for various reasons hence delaying the intended benefits to the citizens and residents of this great nation at both levels of Governments;
- (iii) failure for public capital investment projects being procured economically, implemented efficiently and effectively;
- (iv) failure to provide financial resources to operate the public investments as planned to ensure the delivery of the intended services to the public;
- (v) failure to carry-out rigorous project appraisals or evaluate public investments to verify that they represent efficient and effective solutions to identified problems;
- (vi) governance challenges in the management of public investments leading to sub-optimal use of the public resources;
- (vii) lack of a management information system for recording and tracking progress for these public investment projects; and
- (viii) lack of a comprehensive approach to public investment management processes including project identification, planning, appraisal, selection, budgeting,

implementation, monitoring and evaluation, reporting, project closure, sustainability and ex-post evaluation.

12. The Memorandum therefore proposes a framework to guide Public Investment Management processes in form of the Public Investment Management Regulations in order to provide a comprehensive approach to project identification, planning, appraisal, selection, budgeting, implementation, monitoring and evaluation, reporting, project closure, sustainability and ex-post evaluation.
13. The principal objective of the Public Investment Management Regulations is to provide a framework for screening public funded projects before being funded to ensure quality, effectiveness and efficiency of projects implemented using public resources. This will enhance public investments through effective and efficient implementation of quality projects, with the highest rates of returns on investments.
14. The implementation of the Public Investment Management Regulations will achieve the following outcomes:
  - i. provide standards, methodologies and tools to be followed in project appraisal, monitoring, evaluation and closure;
  - ii. enhance transparency, accountability, prudent use of public resources and public participation in the

determination and monitoring of development budget execution;

- iii. establish and maintain a Public Investment Management Information System which will be a repository of all project information during planning, budgeting, execution, monitoring and evaluation, reporting and project closure and sustainability; and
- iv. Clarify roles and responsibilities of various institutions in the public investment management processes for both levels of Governments.

15. It is under this conviction that the proposed Public Investment Management Regulations will lead to effectiveness and efficiency in implementation of quality public investment projects.

#### **V. Public Consultations and Participation**

16. In accordance with the Constitution of Kenya and PFM laws, extensive consultations were done while preparing Public Investment Management Regulations with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders consulted are, accounting officers of the Ministries, Departments and Agencies, the Counties, the Council of Governors, the IBEC, the Cabinet and the public in general. Their inputs and comments

were received, recorded, analyzed and incorporated in finalizing the Public Investment Management Regulations, 2021.

17. On public participation, it is important to appreciate different stakeholders had different views especially on the mode of implementation of the Public Investment Management Regulations.

## **VI. Guidance**

18. The National Treasury and Planning will sensitize stakeholders including Parliament, accounting officers of National and County Governments and the general public, on Public Investment Management Regulations and processes, the monitoring and evaluation mechanism and the need to ensure regular reporting to the Parliament.

## **VII. Performance Monitoring and Evaluation of the Public Investment Management**

19. The National Treasury and Planning shall monitor the implementation of the Public Investment Management regulations and propose necessary reviews where necessary. In addition, respective accounting officers will carry out regular monitoring and evaluation of implementation of Public Investment Management Regulations.

**VIII. Policy Recommendations**

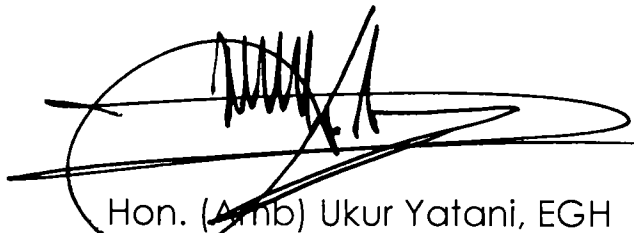
20. The Government policy intention as approved by Cabinet is to complete all on-going projects and any new project will require written approval of the Cabinet Secretary / National Treasury & Planning or the Principal Secretary / National Treasury before the new project can be included in the budget of the National Government to be submitted to the National Assembly.

**IX. Budgetary Implications**

21. The promulgation of the Public Investment Management Regulations will occasion minimal expenditure to operationalize the PIM Regulations and which can be accommodated within the sector ceilings of the National Treasury and Planning.

**X. National Treasury Contact Person.**

22. The contact person at the National Treasury is the Cabinet Secretary, Hon. (Amb) Ukur Yatani, EGH or the Principal Secretary, Dr. Julius Muia, CBS



Hon. (Amb) Ukur Yatani, EGH

**CABINET SECRETARY TO THE NATIONAL TREASURY & PLANNING**

Date.....