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LEGAL NOTICE NO. 197

THE PUBLIC FINANCE MANAGEMENT ACT, 2012

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (CREDIT GUARANTEE SCHEME) REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

PART II—CREDIT GUARANTEE SCHEME

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THE PUBLIC FINANCE MANAGEMENT ACT, 2012

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 58 (9) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (CREDIT GUARANTEE SCHEME) REGULATIONS, 2020

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (Credit Guarantee Scheme) Regulations, 2020. Citation.

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

"Administrator" means the Administrator of the Scheme who shall be the Principal Secretary in the Ministry responsible for matters relating to finance;

"borrower" means a person in whose favour a credit facility has been granted by a financial intermediary, part of which has been guaranteed under these Regulations;

"enterprise" means an undertaking or a business concern engaged in the production of goods, provision of services or trade in goods;

"financial intermediary" means a bank, a microfinance bank and any other institution designated as a financial intermediary by the Cabinet Secretary in accordance with regulation 12 (1) (a); and

"Scheme" means the Credit Guarantee Scheme established under regulation 4.

3. The objects of these Regulations shall be to— Objects of the Regulations.

(a) improve and stimulate the national economy by encouraging additional lending to micro, small and medium enterprises, increasing investment opportunities for micro, small and medium enterprises and strengthening skills and capacities of proprietors of micro, small and medium enterprises;

(b) facilitate the financing of micro, small and medium enterprises by partially guaranteeing credit advanced to the enterprises; and

(c) create a conducive business environment and promote partnerships between the government and financial intermediaries with respect to credit guarantees for micro, small and medium enterprises and other related activities.

PART II—CREDIT GUARANTEE SCHEME

4. There is established a Scheme to be known as the Credit Guarantee Scheme. Establishment of the Scheme.

5. The funds of the Scheme shall consist of— Funds of the Scheme.

(a) monies appropriated by Parliament for the purposes of the Scheme;

(b) income generated from the proceeds of the Scheme;

(c) income from investments made by the Administrator for the purposes of the Scheme;

(d) grants, donations, bequests or other gifts made to the Administrator for the purposes of the Scheme; and

(e) monies from any other source as may be approved by the Cabinet Secretary.

PART III—ADMINISTRATION OF THE SCHEME

6. (1) The Scheme shall be overseen by a committee to be known as the Steering Committee which shall consist of— Steering Committee.

(a) the Principal Secretary in the Ministry responsible for matters relating to finance, who shall be the chairperson, or the Principal Secretary's representative;

(b) the Principal Secretary in the Ministry responsible for matters relating to micro, small and medium enterprises or the Principal Secretary's representative;

(c) the Attorney-General or the Attorney-General's representative;

(d) the Governor of the Central Bank of Kenya or the Governor's representative; and

(e) three independent members, not being public officers, appointed by the Cabinet Secretary for a period not exceeding three years, renewable once, who shall comprise of—

(i) one person with experience in banking or finance;

(ii) one person with experience in insurance; and

(iii) one person with experience as an entrepreneur in a micro, small or medium enterprise.

(2) A person shall be eligible for appointment as a member of the Steering Committee under paragraph (1) (e) if that person—

(a) possesses a degree in a relevant field from a university recognised in Kenya; and

(b) meets the requirements of Chapter Six of the Constitution.

7. The Steering Committee shall— Functions of the Steering Committee.

(a) oversee the administration of the Scheme;

(b) advise the Cabinet Secretary generally on the administration of the Scheme;

(c) develop policy guidelines relating to guarantees by the Scheme;

(d) monitor the uptake of guarantees for credit facilities extended to micro, small and medium enterprises and make recommendations for improvement thereof;

(e) review applications for participation in the Scheme from institutions and advise the Cabinet Secretary on the suitability of the applicants to participate in the Scheme;

(f) advise the Cabinet Secretary on the designation of other entities as participating financial intermediaries;

(g) receive reports on the performance of the Scheme;

(h) review the criteria for the issuance of credit guarantees under the Scheme including guarantee fees, maximum loan sizes, guarantee coverage rates and credit standards defining eligible borrowers to be included in the scheme;

(i) monitor and evaluate the activities of the Scheme; and

(j) perform such other functions that, in the opinion of the Cabinet Secretary, shall promote the objects of the Scheme.

Administrator of the Scheme.

8. (1) The Administrator of the Scheme shall be the Principal Secretary in the Ministry responsible for matters relating to finance or a person designated by the Principal Secretary in writing for that purpose.

(2) The Administrator shall—

(a) open and operate bank accounts for the purposes of the Scheme;

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

(c) consult with the Steering Committee on matters relating to the administration of the Scheme;

(d) determine the maximum amounts of guarantees that the Scheme may extend to a participating financial intermediary;

(e) cause to be kept books of accounts and other books and records in relation to the Scheme of all activities and undertakings financed and guaranteed by the Scheme;

(f) enter into and sign agreements with financial intermediaries for the purpose of offering guarantees for part of the credit advanced to viable micro, small and medium enterprises; and

(g) open an electronic ledger which shall contain the following details—

(i) the names of participating financial intermediaries; and

(ii) the names of micro, small and medium enterprises that participating financial intermediaries have extended credit facilities indicating enterprises whose owners or proprietors are women, persons with disability and the youth;

Scheme Manager and staff.

9. (1) The day to day operations of the Scheme shall be undertaken by a Scheme Manager and staff.

(2) The Scheme Manager and staff of the Scheme shall be appointed by the Cabinet Secretary from among the officers of the Ministry responsible for matters relating to finance.

(3) Notwithstanding paragraph 2, the Cabinet Secretary may appoint any other person as a member of staff of the Scheme if that person's knowledge and skills are found to be necessary for the performance of the functions of the Scheme.

Eligible borrowers.

10. (1) An enterprise to which a credit facility has been extended shall be eligible for a partial guarantee of the credit facility under the Scheme if that enterprise—

(a) is a micro, small or medium enterprise;

(b) is registered as a business or company under the relevant laws;

(c) is a registered taxpayer and is in compliance with the relevant tax laws;

(d) is registered by a county government and holds a valid business permit or trade licence;

(e) is not part of any group or enterprise which would otherwise not be eligible for a credit guarantee under these Regulations;

(f) intends to use the credit advanced for business purposes, including—

(i) working capital requirements of the enterprises;

(ii) acquisition of assets; or

(iii) rebuilding businesses affected by natural disasters or other financial crises;

(g) is credit-worthy;

(h) does business in Kenya; and

(i) satisfies any other condition that may be imposed by the Steering Committee before the credit guarantee is granted.

(2) A guarantee for a credit facility under paragraph (1) shall be for a portion of the credit facility.

Ineligible borrowers.

11. An enterprise shall not be eligible for a credit guarantee under the Scheme if—

(a) the credit facility relates to risks which are already covered by the Government, any other credit guarantee, insurer or indemnity, to the extent so covered;

(b) the credit facility is inconsistent with any prudential guidelines issued by the Central Bank of Kenya or under any other written law;

(c) the enterprise already enjoys a credit guarantee for another credit facility under these Regulations and the lending institution has invoked the guarantee;

(d) the enterprise has been sanctioned by a financial intermediary against collateral security or third-party guarantee;

(e) the enterprise is a financial intermediary or a state corporation;

(f) the enterprise is not a micro, small or medium enterprise; or

(g) the credit facility is intended for an unlawful purpose.

Eligible financial intermediaries.

12. (1) A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary—

(a) is an institution licensed by Central Bank of Kenya or any other institution as may be designated by the Cabinet Secretary on the advice of the Steering Committee;

(b) has experience in extending and managing credit facilities to micro, small and medium enterprises;

(c) commits to extend credit facilities to micro, small and medium enterprises which shall be at least four times the amount that the Scheme will guarantee;

(d) has a wide geographical branch network or outreach;

(e) has a wide sectoral coverage in its portfolio of credit facilities that have been extended to micro, small and medium enterprises; and

(f) has maintained a portfolio quality that is above a minimum level as may be determined by the Steering Committee on credit facilities that have been extended to micro, small and medium enterprises.

(2) The Scheme shall enter into a written agreement with each eligible financial intermediary before the financial intermediary is allowed to participate in the Scheme which shall specify how the financial intermediaries shall participate in the Scheme.

Applications by financial intermediaries.

13. (1) An eligible financial intermediary which wishes to participate in the Scheme shall apply in writing to the Administrator.

(2) The application under paragraph (1) shall indicate the—

(a) minimum number of times of the guarantee value that the financial intermediary expects to extend as credit to micro, small and medium enterprises;

(b) size of credit extended by the financial intermediary to micro, small and medium enterprises both in total amount and as a proportion of total lending;

(c) performance of the credit facilities the financial intermediary has extended to micro, small and medium enterprises, including the ratio of non-performing credit facilities;

(d) sectors covered in the financial intermediary's micro, small and medium enterprise borrowers;

(e) geographical distribution of the financial intermediary's branch network or outreach; and

(f) any other relevant information that may be required by the Administrator.

(3) Before an eligible financial intermediary is allowed to participate in the Scheme, the financial intermediary shall undertake in writing to submit to the Administrator reports on the value of credit extended to micro, small and medium enterprises under these Regulations in accordance with regulation 19.

Conditions for guarantee by the Scheme.

14. (1) A participating financial intermediary shall—

(a) evaluate applications for credit facilities by using prudent lending criteria;

(b) exercise business discretion and use due diligence in approving commercially viable applications for credit facilities;

(c) conduct the account of the borrowers with normal banking prudence; and

(d) provide access to affordable credit facilities to micro, small and medium enterprises on the basis of the partial guarantees committed under the Scheme.

(2) The participating financial intermediary shall not use more than one per cent of the allocated portfolio on any single individual micro, small or medium enterprise.

(3) The participating financial intermediary shall use at least thirty per cent of guarantee funds available on credit advanced to enterprises owned by women, youth and persons living with disabilities.

(4) The participating financial intermediary shall—

(a) monitor the borrower account;

(b) provide basic business support to the borrower that the participating financial intermediary provides its regular clients;

(c) safeguard the primary securities taken from the borrower in respect of the credit facility in good and enforceable condition; and

(d) ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and manner specified by the Scheme.

(5) The participating financial intermediary shall—

(a) exercise all the necessary precautions and maintain its recourse to the borrower for the entire amount of the credit facility owed to it and initiate such necessary action for recovery of the outstanding amount, including such action as may be recommended by the Steering Committee;

(b) comply with the directions of the Cabinet Secretary in facilitating recoveries of the defaulted credit facility or safeguarding its interest as a guarantor;

(c) in respect of any defaulted account, exercise the same diligence in recovering the amount in default, and safeguarding the interest of the Scheme in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Scheme;

(d) refrain from any act or omission, either before or subsequent to invocation of the guarantee, which may adversely affect the interest of the Scheme;

(e) ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor without advance written permission from the Cabinet Secretary; and

(f) secure for the Scheme through a stipulation in an agreement with the micro, small and medium enterprise the right to share the enterprise's details and any other information provided by the borrower under these Regulations.

(6) Where a participating financial institution considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over a period of time, it may enter into an agreement with the borrower to pay the debt over that period and at such intervals, and subject to such terms and conditions, as provided for by relevant laws relating to the extension of credit facilities.

(7) A participating financial intermediary shall hold lien on assets created out of the credit facility extended to the borrower, on its own behalf and on behalf of the Scheme.

Invoking a guarantee.

15. (1) A participating financial intermediary may invoke the guarantee in respect of a credit facility if the following conditions are satisfied—

(a) the amount in default in respect of the credit facility has not been paid;

(b) the credit facility has been classified as non-performing in accordance with the Central Bank of Kenya prudential guidelines;

(c) the guarantee in respect of the credit facility was in force at the time the facility was classified as non-performing;

(d) the participating financial intermediary has not invoked any credit life insurance with respect to the credit facility;

(e) a period of three months has elapsed from the date of the last disbursement of the credit facility to the borrower without payment by the borrower or the date of payment of the guarantee fee in respect of the credit facility by the borrower, whichever is the later; and

(f) the credit facility has been recalled and recovery proceedings have been initiated.

(2) The claim for the guarantee shall be preferred by the financial intermediary in such manner and within such time as may be specified by the Administrator.

(3) In this regulation, "amount in default" means the principal amount outstanding in the borrower's account in respect of a credit facility as at—

(a) the date of the credit facility becoming non-performing;

(b) the date the claim is lodged; or

(c) such other reasonable date as may be specified by the Scheme for preferring any claim against the guarantee which shall be subject to the maximum level guaranteed, whichever is earlier.

(4) A claim under paragraph (1) shall be accompanied by the following details—

(a) the name of the micro, small or medium enterprise to which a credit facility was extended;

(b) a certified copy of the certificate of registration or incorporation of the micro, small or medium enterprise;

(c) demand letters by the participating financial intermediary to the micro, small or medium enterprise;

(d) evidence that the credit facility was used for the intended purpose;

(e) the balance of the credit facility that is outstanding at the time of the default;

(f) a statement by the participating financial intermediary that all reasonable collection efforts, excluding conclusion of litigation or other judicial processes for the recovery of the credit facility, have been exhausted;

(g) a statement that the participating financial intermediary has classified the outstanding credit amount as non-performing in accordance with the Central Bank of Kenya prudential guidelines; and

(h) any other information or documents that the Administrator may require in order to validate the claim.

(5) Once the Administrator has received all the documentation or information required to validate a claim, the Administrator shall, within thirty days of receiving the documentation or information—

(a) validate the authenticity of the claim; and

(b) notify the participating financial intermediary in writing of the approval or denial of the claim.

Payment of claims.

16. (1) Where the Administrator approves the payment of a claim, the Scheme Manager shall pay the participating financial intermediary—

(a) fifty per cent of the guaranteed amount within sixty days from the date the claim was received by the Administrator; and

(b) fifty per cent of the guaranteed amount within fourteen days of receipt by the Administrator of a notice of exhaustion of available remedies to recover the principal amount outstanding from the borrower or within six months after the claim was first lodged, whichever comes first.

(2) The payment of claims by the Scheme Manager to participating financial intermediaries shall not take away the responsibility of the financial intermediaries to recover the outstanding amounts of the credit facilities that are due from defaulting micro, small and medium enterprises.

(3) Any money paid by the Scheme Manager on a guarantee shall be a debt due to the national government from the micro, small or medium enterprise whose credit facility was guaranteed and be recoverable as a debt due to the national government.

(4) Where the Scheme Manager has paid a claim, and thereafter the participating financial intermediary recovers any funds owed by the micro, small or medium enterprise, the participating financial intermediary shall, within ninety days from the date of the recovery, reimburse the Scheme according to the risk-sharing ratio, after deducting any reasonable expenses incurred in the recovery of the funds, but shall not deduct interest charged by the participating financial intermediary on the outstanding amount that is higher than the interest charged on the credit facility before the default.

Record of recovery costs.

17. The participating financial intermediary shall keep a record of all expenses incurred in the recovery process.

Claim to be paid in sixty days.

18. The Scheme Manager shall pay each guarantee claim within sixty days from the date the claim was lodged.

Reports by participating financial intermediaries.

19. (1) A participating financial intermediary shall submit to the Administrator at least once in each month a report on the credit facilities for which guarantees have been issued under these Regulations.

(2) The participating financial intermediary shall submit the report under paragraph (1) within ten days after the end of the previous month.

(3) The report under paragraph (1) shall include information on—

(a) all credit facilities extended by the financial intermediary under the Scheme during that period;

(b) the total value of the credit committed by the participating financial intermediary under the Scheme during that period;

(c) all credit guarantees given to the participating financial intermediary which shall be disaggregated into enterprises owned by women, youth and persons living with disability whose credit facilities have been guaranteed;

(d) credit guarantees given to the participating financial intermediary disaggregated into the number of micro, small and medium enterprises whose credit facilities have been guaranteed and by county of operation; and

(e) any other relevant information required by the Scheme Administrator.

(4) Each participating financial intermediary shall submit at least once in each month a list of all credit facilities issued under these Regulations during the previous month.

(5) The participating financial intermediary shall list each credit facility by the account number and provide the—

(a) name of the micro, small or medium enterprise;

(b) micro, small or medium enterprise's county of business operations;

(c) value of the credit facility that has been guaranteed;

(d) interest rate charged on the credit facility;

(e) outstanding balance on the credit facility;

(f) date of approval of the credit facility;

(g) date of the first payment by the micro, small or medium enterprise;

(h) number of instalments to be paid by the micro, small or medium enterprise in the repayment of the credit facility; and

(i) such other details as the Administrator may require.

(6) At least once in each month, each participating financial intermediary shall submit a report to the Administrator of all credit facilities which are in default for thirty days or more specifying the —

(a) name of the micro, small or medium enterprise;

(b) sector of the economy that the micro, small or medium enterprise is engaged in;

(c) value of the credit facility that was guaranteed;

(d) outstanding balance on the credit facility;

(e) value of the unpaid instalment of the credit facility;

(f) date of first unpaid instalment on the credit facility;

(g) number of days in delay in the repayment of the credit facility; and

(h) reasons for the non-repayment of the credit facility.

(7) The report under paragraph (6) shall describe the measures taken by the bank to carry out collections and may reference the letters sent, follow-up notices, and warnings through legal channels.

(8) The participating financial intermediary shall report on the status of any defaulted credit facility for which the Scheme Manager has paid either partial or full coverage amounts.

(9) The participating financial intermediary shall report on each defaulted credit facility until—

(a) the guarantee payment has been recovered by the financial intermediary from the micro, small or medium enterprise; or

(b) the financial intermediary has fully provisioned for the credit facility in accordance with the Central Bank of Kenya prudential guidelines.

(10) Notwithstanding any other provisions of this regulation, the participating financial intermediary shall also report on the following matters in a manner and at intervals specified by the Administrator—

(a) the number and values of rejected credit facilities, repaid credit facilities and a projection of the credit facilities to be extended in the forthcoming period of three months; and

(b) the impact of the credit facilities on micro, small and medium enterprises in the manner specified by the Administrator.

20. The Scheme Manager shall prepare and submit to the Administrator regular reports on the credit guarantees given under the Scheme including— Reports by the Scheme Manager.

(a) financial and technical reports on guarantees made during the period including information on—

(i) the products and sectors for which guarantees have been issued;

(ii) the number of beneficiary micro, small and medium enterprises;

(iii) the value of credit guaranteed;

(iv) the repayment periods; and

(v) the guarantees which have been liquidated;

(b) reports on repayments made on outstanding credit facilities and details of any outstanding payments;

(c) reports on delinquent guarantees and the stage of recovery;

(d) reports on the size and quality of the guaranteed portfolio;

(e) reports on the liquidity position of the Scheme; and

(f) the risk assessment of the credit guarantees or classes of guarantees.

21. (1) The Cabinet Secretary may impose additional conditions with respect to the issuance of guarantees for credit facilities advanced to borrowers under these Regulations. Cabinet Secretary may prescribe additional conditions.

(2) Without prejudice to the generality of subsection (1), such additional conditions may include the—

(a) maximum size of the credit facilities that may be guaranteed under these Regulations with respect to a credit facility or class of credit facilities;

(b) contributions by the financial intermediaries for purposes of expanding the Scheme and contributing to job creation;

(c) extent of the liability of the Scheme to a participating financial intermediary if the participating financial intermediary fails to comply with these Regulations;

(d) variation of the terms and conditions of an agreement if a participating financial intermediary fails or refuses to comply with these Regulations;

(e) the documents, information and reports that the participating financial intermediaries may be required to submit to the Scheme;

(f) manner of giving of information to the Scheme for the purposes of the making of an agreement;

(g) requirements in relation to the transfer of any rights and liabilities under a credit facility agreement; and

(h) such other matters as the Cabinet Secretary may consider necessary for the purposes of the Scheme.

PART IV—MISCELLANEOUS PROVISIONS

22. (1) A person who— Offences and penalties.

(a) wilfully applies any proceeds of a guaranteed credit facility to any purpose other than the purpose for which the credit was approved;

(b) having obtained a guaranteed credit facility, wilfully destroys or misappropriates any security given in relation to the guaranteed facility;

(c) knowingly gives false information; or

(d) wilfully destroys any asset used as a collateral by a participating financial intermediary,

commits an offence and shall be liable on conviction to the penalties specified in section 199 of the Act.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the company or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a),

also commits that offence and shall be liable on conviction to the penalties specified in section 199 of the Act.

Made on the 5th October, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

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EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (CREDIT GUARANTEE SCHEME) REGULATIONS, 2020

PART I

Name of the Statutory Instrument: The Public Finance Management (Credit Guarantee Scheme) Regulations, 2020

Name of the parent Act: The Public Finance Management Act, 2012

Enacted Pursuant to: Section 58 (9)

Name of the Ministry: The National Treasury and Planning

***Gazetted* on:** 13th October, 2020

Tabled on: ....

PART II

1. **The Purpose of the Public Finance Management (Credit Guarantee Scheme) Regulations, 2020**

The purpose of the Regulations is to provide for the establishment and administration of the credit guarantee scheme for micro, small and medium enterprises (MSMEs) in order to—

(a) improve and stimulate the national economy by encouraging additional lending to micro, small and medium enterprises, increasing investment opportunities for micro, small and medium enterprises and strengthening skills and capacities of proprietors of micro, small and medium enterprises;

(b) facilitate the financing of micro, small and medium enterprises by partially guaranteeing credit advanced to the enterprises; and

(c) create a conducive business environment and promote partnerships between the government and financial intermediaries with respect to credit guarantees for micro, small and medium enterprises and other related activities.

2. **Legislative Context**

These Regulations have been developed in accordance with the provisions of the Public Finance Management (Amendment) (No.2) Act, 2020. The Act empowers the Cabinet Secretary to establish a scheme to issue guarantee for credit advanced to MSMEs, and to prescribe regulations for the operation of the same. The development of the Regulations recognized and considered the following:

i. principles of public finance as enshrined in Article 201 of Constitution of Kenya and Section 15 of the Public Finance Management Act, 2012;

ii. reporting obligations of the Cabinet Secretary as outlined in Article 213 of the Constitution of Kenya and Sections 32 and 59 of the Public Finance Management Act, 2012; and
iii. the need for special provisions to enable enterprises owned by youth, women and persons with disabilities to benefit from the credit guarantee scheme for MSMEs.

2. Policy Background

3.1.1. MSMEs play a critical role in accelerating economic development, investment as well as creation of employment opportunities in the country. According to the 2020 Economic Survey, MSMEs constitute about 98% of all business in the country, create 91% of the jobs annually and contribute 34% of the GDP. However, most of these enterprises experience limited access to credit partly because of the perceived risk by financial institutions. The situation has been worsened by the impact of COVID-19 Pandemic and require immediate interventions.

3.1.2. Establishment of a credit guarantee scheme to enhance access to credit by MSMEs is a longstanding policy objective of the Government. Kenya Vision 2030, in the Third Medium Term (2018-2022) Plan for the Financial Services Sector, identified credit guarantee as a key programme to enhance performance of MSMEs in the country. The 8-Point Economic Stimulus Package unveiled by H.E the President on 28th May 2020 further highlights the importance of credit guarantees in supporting the sustenance and creation of livelihoods through MSMEs during and after the Pandemic period. In order to support the policy objectives mentioned above, the Cabinet Secretary has developed these Regulations that prescribe a mechanism for providing partial guarantee for the MSMEs to reduce the perceived risk and enable them access credit from financial institutions.

4. Consultation Outcome

4.1.1. The Regulations were subjected to public participation through adverts in the local dailies on 21st August 2020 and the National Treasury website from 19th to 31st August 2020. The development of the Regulations considered inputs and comments from the relevant Government ministries, departments and agencies, private sector, the general public and development partners. Comments were received from, among others, the Ministry of Industrialization, Trade and Enterprise Development, Micro and Small Enterprise Authority, Institute of Youth Enterprise Development Fund, IDB Capital Limited, Central Bank of Kenya, Kenya Bankers Association, National Bank of Kenya Limited, SMEP Microfinance Bank Limited, Kenya Federation of Master Builders, Ernest and Martin Associates, African Women Studies Centre of the University of Nairobi, FSD-Kenya and the World Bank. Due to the COVID-19 pandemic, the National Treasury was not able to conduct physical public participation meetings with stakeholders.

4.1.2. Generally, the stakeholders supported the establishment of the credit guarantee scheme. However, some stakeholders in their comments recommended the establishment of the credit guarantee scheme as a body corporate in line with international best practice. The National Treasury considered this proposal and noted that the law currently allows for issuance of guarantee by the Cabinet Secretary. The establishment of a body corporate with mandate to issue credit guarantee for MSMEs may be considered in future in line with international best practice. The other comments were considered and the Regulations updated where appropriate.

5. Guidance

The National Treasury will sensitize all the relevant stakeholders on the provisions of the Regulations to ensure adherence to the law as well as achievement of the objectives of credit guarantee scheme.

6. Impact

6.1. The Regulations do not infringe on any fundamental rights and freedoms of the public as enshrined in the Constitution of Kenya.

6.2. The Regulations provide for participating financial intermediaries to charge a preferential interest rate on loans due to the reduction of risk as a result of the sovereign guarantee. The ultimate effect will be affordable credit advanced to MSMEs to enhance growth and sustainability of their enterprises.

6.3.1. The Regulations enable the Government to achieve its goal of enhancing the role of MSMEs in creation of jobs and general economic development.

6.3.2. The Regulations establish a credit guarantee scheme that enables the Government to give its undertaking to financial intermediaries that in the event of default on loans advanced to MSMEs, the Government will pay the guaranteed part of the loan in default. This arrangement enables the financial institutions to extend credit to MSMEs, thereby supporting the socio-economic development of a country.

6.4. The net impact of the proposed statutory instrument is positive on MSMEs and the Kenya's economic growth.

7. Review of the Regulations

The National Treasury will regularly review and monitor the implementation of the Regulations.

8. Contact

Hon. (Amb.) Ukur Yatani, EGH
Cabinet Secretary for the National Treasury and Planning
P.O. Box 30007 – 00100
NAIROBI.

Date: ....

CONSOLIDATED MATRIX OF COMMENTS ON THE DRAFT PUBLIC FINANCE MANAGEMENT (CREDIT GUARANTEE SCHEME) REGULATIONS, 2020

S/No	Reg. No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**	How the comment was addressed
ERNEST AND MARTINS ASSOCIATES					
1.	4	**4.** There is established a Scheme to be known as the Credit Guarantee Scheme.	Is this scheme a body corporate? Does it have the power to sue and be sued? Does it have power to enter into contracts e.g. employment (under 9(2) and 18(2)(b) and (c)) 9 (2) The Scheme Manager and staff of Scheme shall be appointed by the Cabinet Secretary from among the officers of the Ministry responsible for matters relating to finance. (b) payment of the salaries, allowances and other charges in respect of the staff of the Scheme; (c) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Scheme;	The scheme shall be a body corporate with the power to sue and be sued.	**Not accepted.** The scheme is neither a fund nor a body corporate. The regulations are amplifying the provision of Section 28(9) which gives the Cabinet Secretary powers to establish the scheme. The operations of the scheme are still under the Cabinet Secretary/National Treasury. However, the National Treasury has reviewed and proposed amendments on regulations 18, 19 and 20.

2.	**6.** (1) (e) (i)	one person with experience in banking and finance;	To make banking and finance as alternatives not mandatory to have both	6. (1) (e)(i) delete the word "and" and replace with the word "or"	**Accepted.**
3.	**7.** (f)	develop policy guidelines relating to guarantees by the Scheme	Include a requirement for The Steering Committee to establish a "risk-sharing formula" for purposes of regulation 14(7) (7) Any recoveries made on a defaulted credit facility after a guarantee has been paid shall be shared between the participating financial intermediary and the Scheme in line **<u>with the risk-sharing formula</u>**.	Amend **7.** (f) to add the words **"including establishment of a risk-sharing formula for purposes of regulation 14(7)"** after the word "scheme"	**Not accepted.** Regulation 14(7) (f) is inclusive of the risk sharing formula, among other guidelines. The specific risk sharing formula will be included in the service level agreement.
4.	**7.** (g)	(g) review the criteria for issuance of credit guarantees under the Scheme	Include a requirement for The Steering Committee to establish criteria for "facilitating recoveries of defaulted credit facility" for purposes of regulation 14(8)(b) (b) comply with the directions of the Steering Committee for facilitating recoveries of the defaulted credit facility or safeguarding its interest as a guarantor;	Amend **7.** (g) to add the words **"and for facilitating recoveries of defaulted credit facility"** after the word "guarantees"	**Not accepted.** This matter is already addressed in 7(g). The criteria for issuance includes the criteria for recoveries. However, the National Treasury proposed an amendment to regulation 14 (8) (b).
5.	**8(2)(g)**	showing the expenditure incurred from the Scheme,	To include the income as part of the information to include in the financial statements	**8(2)(g)** Insert the words "income and" before the word "expenditure"	**Accepted.**
6.	**8 and 9**	8(1) refers to **the Administrator**	Harmonize paragraphs 8 and 9 and **13. (1) on whether the scheme is under an**	**9.** (1) Delete the words "Scheme Manager ' and replace with "Administrator"	**Not accepted.** Regulations 8 and 13 refer to the

		8(2) (b) supervise and control the administration of the Scheme; **9.** (1) The day to day operations of the Scheme shall be undertaken by a **Scheme Manager**	**'Administrator' or 'Scheme Manager'**	**9.** (2) Delete the words "Scheme Manager ' and replace with "Administrator" In the alternative, in paragraph 8, 13(1), 13(2)(f), and 13(3) replace the word "Administrator" **with** "Scheme Manager '	Administrator as the one with overall responsibility over the operations of the scheme.
7.	**10. (1)**(c)	is registered by a county government and holds a valid business permit or trade licence;	Amend **10. (1)**(c) to comply with paragraph 7(b) of Part 2 –Fourth Schedule of The Constitution of Kenya 2010 on the functions and powers of the county governments **7.** Trade development and regulation, including— (b) trade licences (excluding regulation of professions);	**Amend 10. (1)**(c) to add "or is licenced by a relevant professional body" after the word "licence"	**Not accepted.** The proposal is beyond the provisions of the Act.
8.	**12. (1)** (d)	has a wide geographical network;	**12. (1)** (d) as proposed will disenfranchise marginalized areas because, it will lock out regional or community based organizations involved in extending and managing credit facilities to micro, small and medium enterprises as envisaged in **12. (1)** (b)	Delete **12. (1)** (d)	**Not accepted.** The proposed credit guarantee scheme is targeted at marginalized groups in credit markets. For financial institutions to reach these groups they need to have a wide geographical network. Products can be developed over time to

			This will also be contrary to article 201(b) on **Principles of public finance ie** (iii) expenditure shall promote the equitable development of the country, including by **making special provision for marginalized groups and areas;**		cover community based organizations and similar institutions.
9.	**12. (1)** (f)	has maintained a portfolio quality that is above the market average as demonstrated by low non-performing ratios on credit facilities that have been extended to micro, small and medium enterprises.	This provision may defeat the purpose of the scheme. By their very nature, micro, small and medium enterprises fall under high risk category. This **12. (1)** (f) will limit access to credit guarantee since financial institutions already shun MSME. Further **12. (1)** (f) will contradict objective **3(a)** of the proposed rules ie (a) improve and stimulate the national economy by encouraging additional lending to micro, small and medium enterprises, increasing investment opportunities for micro, small and medium enterprises and strengthening skills and capacities of proprietors of micro, small and medium enterprises;	Delete **12. (1)** (f) and replace it with "Has established and has maintained policies and guidelines to ensure a portfolio quality including (i) targeting to have above the market average non-performing ratios on credit facilities that have been extended to micro, small and medium enterprises" (ii) applicant is not a person declared bankrupt or a debtor in a bankruptcy proceeding prior loan application	**Not accepted.** The purpose of regulation 12 (1) is to ensure only prudent financial intermediaries participate in the scheme. The selection of intermediaries will also consider how the intermediaries actually lend to MSMEs.

			The regulation **12. (1)** (f) should provide principal-based metrics that will encourage lenders to direct funds to MSME.		
10.	13(2)(a)	(a) multiples of guarantee value	What does the term "multiples of guarantee value" mean	Define the term "multiples of guarantee value"	**Accepted.** a. define the multiple of the guarantee value b. Insert a new regulation providing for the scheme administrator to allocate funds to PFIs
11.	13(2)(a) and (b)	(a) multiples of guarantee value the financial intermediary intends to extend to micro, small and medium enterprises; (b) size of credit extended by the financial intermediary to micro, small and medium enterprises both in total amount and as a proportion of total lending;	What is the interplay, link or connectedness between 13(2)(a) and (b). In my view, they appear to say the same thing. Unless there is a different intention.	Delete 13(2)(a) unless the term "multiples of guarantee value" has a meaning different to 13(2)(b)	**Not accepted.** Definition of "multiples of guarantee value" has been proposed. The National Treasury also proposed insertion of a new regulation on the allocation of funds to participating financial intermediaries by the Administrator.
12.	14(11)(c)	(c) a lock-in period of three months from either the date of last disbursement of the loan to the borrower or the	14(11) (c) mentions of "payment of the guarantee fee in respect of credit facility to the borrower"	Delete the words "or the date of payment of the guarantee fee in respect of credit facility to the borrower, whichever is later"	**Accepted.** Delete (c) and replace it with the following: "a period of three months has elapsed since the credit

		date of payment of the guarantee fee in respect of credit facility to the borrower, whichever is later, has elapsed;	There is no other mention of a "guarantee fee" in the regulations. It's not clear how the fee is set, by whom etc, Does the fee need approval by the minister, parliament etc. A clause of the guarantee fee should be provided for in explicit terms as provided in article **210.** **Imposition of tax** (1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation	In the alternative put in place a regulation for the imposition of the guarantee fee.	facility was disbursed to the borrower." In addition, a new function on imposition of fees is proposed for the Administrator.
13.	14(11) (c)	(d) the credit facility has been recalled and the recovery proceedings have been initiated under due process of law.	Proceedings means action taken in a court to settle a dispute. However, in some instances, court action may not be viable where small amounts are involved.	Delete the words "**recovery proceedings**" and replace with "**recovery action which may include recovery proceedings**"	**Accepted with modification.** Delete (d) and replace with "the credit facility has been recalled and recovery action has been initiated."
THE NATIONAL BANK OF KENYA LTD					
14.	6 (1)	Proposed additional Scheme Steering Committee Member	Inclusion of Kenya Bankers Association for oversight.	(f) Chief Executive officer of Kenya Bankers Association or the representative.	**Not accepted.** The Scheme Steering Committee is an administrative committee and not for oversight. Kenya Bankers Association is not an oversight body.
15.	7 e	receive reports on the performance of the scheme;	Clarity of the frequency of reporting	receive monthly reports on the performance of the	**Not accepted.** The frequency of submitting reports to the scheme

				scheme;	steering committee will be determined administratively depending on the progress of the scheme.
16.	10 (1)a	is a micro, small or medium enterprise;	To ensure only operational MSME businesses are eligible.	is a micro, small or medium enterprise with annual sales turnover not exceeding Kes. 100M and a minimum 12 months business operation;	**Not accepted.** The definition of micro, small and medium enterprises is provided in law.
17.	10 (1)b	Is registered as a business or company under the relevant laws;	To include businesses operating as registered partnerships and groups.	is registered as a business, private limited company, partnership or group under the relevant laws;	**Not accepted.** Partnerships and groups are not excluded in regulation.
18.	10 (1) c	Is registered by a county government and holds a valid business permit or trade licence;	The county governments may lack the capacity to register and keep a registry of all businesses in the county.	is licensed by a county government and holds a valid business permit or trade license;	**Not accepted.** Licensing implies existence of a register of businesses.
19.	12 (1)d	Has a wide geographical network;		Has a wide geographical network with presence in at least 50% of the counties.	**Not accepted.** Wide geographical network does not only imply brick and motar but also includes digital platforms.
20.	14 4(d)	Ensure that the guarantee claim in respect of the credit facility is lodged with the Scheme in the form and manner specified by the	To provide clarity on the timelines for lodging a guarantee claim	Ensure that the guarantee claim in respect of the credit facility is lodged with the Scheme in the form and manner specified by the Scheme within 30 days of the facility becoming non-performing under	**Not accepted.** Specific claim process will be provided in the manuals. However, the National Treasury proposed deletion of

		Scheme without delay.		the prudential guidelines	"without delay" in 14 (4) (d).
21.	14 11(a)	The amount in default in respect of the facility has not been paid and the facility has been classified as non-performing;		The amount in default in respect of the facility has not been paid and the facility has been classified as non-performing under the prudential guidelines;	**Accepted with modification.** The National Treasury proposed addition "Central Bank of Kenya" before "prudential guidelines"
22.	14 13	In this section, "amount in default" means the principal amount outstanding in the account of the borrower in respect of the credit facilities as at -	To include accrued interest for the loan facility as at the date of lodging the guarantee claim to enable financial institution to cover for the cost of funds and related costs.	In this section, "amount in default" means the outstanding loan principal and accrued interest amount in the account of the borrower in respect of the credit facilities as at -	**Not accepted.** Guarantees will be issued only for the principal amount in line with the subrogation principle of insurance.
23.	15 (1)	A participating financial intermediary shall submit daily reports to the administrator on the credit guarantees issued under these Regulations.	Propose monthly reporting instead of daily. This in line with section 15, sub-section 2	A participating financial intermediary shall submit monthly reports to the administrator on the credit guarantees issued under these Regulations.	**Accepted.**

24.	15 (2)	A participating financial intermediary submitting a report on credit guarantees shall submit the report not later than seven days of the end of the previous month.	To allow time to compile reports and submit.	A participating financial intermediary submitting a report on credit guarantees shall submit the report not later than 10th day of the preceding month.	**Accepted with modification.** Substitute "ten days of the end of the previous month" for "10th day of the preceding month"
		SMEP BANK			
25.	14	Accessing the guarantee	Please provide a template application form which should capture eligibility & ineligibility conditions together with condition 14(6) This form to be kept in borrower's file and used as a record evidence for the guarantee.		**Accepted.** The Steering Committee to provide guidance on implementing the proposal.
26.	12(f)		This should be considered before COVID 19		**Not accepted.**
		KENYA FEDERATION OF MASTER BUILDERS(KFMB)			
27.	Part II 4 **(regulation 4)**	There is established a Scheme to be known as the Credit Guarantee Scheme.	To avoid vagueness thus the definition of the scheme should be concise	There is established a Scheme to be known as the Kenya Credit Guarantee Scheme Ltd.	**Not accepted.** The law as amended does not support establishment of a body corporate. However, this can be a basis for a more sustainable way of delivering guarantees in

					future. (point out in consideration records)
28.	Part II (d) **(regulation 3)**	Addendum to the objects of the scheme	Arranging for granting of guarantees of payment to SME's by local/International procuring entities after the delivery of goods/services by the MSME's entities registered under the Kenya Credit Guarantee Schemes Limited	Evaluate and underwrite guarantee provisions by local and international procuring entities to MSME'S entities registered under the Kenya Credit Guarantee Schemes Limited after the performance and/or delivery of goods and services rendered.	**Not accepted.** It is the considered view of the National Treasury that this is covered by the objects as already stipulated.
29.	Part III 6 (1)	The Scheme shall be administered by a committee to be known as the Scheme Steering Committee which shall consist of—	Considering the magnanimity of the role to be played by the Guarantee Schemes, instituting a board will promote credibility as well as setting a specific tenure for each of the board members in line with The Code of Governance for State Corporations	The scheme shall be administered by a board to be known as the Kenya Credit Guarantee Scheme Limited Board for a tenure of which shall not exceed a cumulative term of six years or two terms of three years each which shall consist of—	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
30.	Part III 6 (1) **(regulation 6 (1))**	Addendum of participating Ministries	The ministries highlighted do not cater for targeted recipients of the Credit Guarantee Schemes which include Contractors involved in building, civil and construction works in the country as well as the agricultural sector	To include Ministries of targeted recipients of the Credit Guarantees which include but not limited to: 1. Ministry of Infrastructure, Public Works, Housing and Urban Development 2. Ministry of Water and Irrigation 3. Ministry of Agriculture	**Not accepted.** The intention is not compartmentalize enterprises. The ministry responsible for matters relating to MSMEs covers MSMEs from all sectors of the economy and is already a member of the Steering Committee.

31.	Part III 6 (1)	Three independent members, not being public officers, appointed by the Cabinet Secretary who shall comprise of— a. one person with experience in banking and finance; b. One person with experience in insurance; and c. one person with experience as an entrepreneur in a micro, small or medium enterprise.	Inclusivity of independent members who understand the needs of SME's through their representative bodies as well as professional bodies. This will enhance the pulpability of the scheme to be MSME centered rather than public service centered	Five (5) independent members not being public officers appointed by the Cabinet Secretary who shall comprise of— a. One person with experience in banking and finance nominated from the Kenya Banker's Association b. One person with experience in insurance nominated from the Association of Kenya's Insurers c. One person with experience as an entrepreneur in a micro, small or media enterprise nominated from Kenya Chamber of Commerce and Industry d. One person with experience in construction sector entrepreneurship p nominated from Kenya Federation of Master Builders e. One person with experience in legal and	**Not accepted.** The role of the Steering Committee is well covered by the current membership. In addition, MSMEs across all sectors are represented in the Steering Committee by the ministry responsible for MSMEs.

				accounting experience and certification from Institution of Certified Public Accountants and the Law Society of Kenya	
32.	Part III 6 (2) a	Possesses a degree in a relevant field from a university recognized in Kenya;	The specificity of having a degree/academic qualification doesn't not cater for the practical experience in the particular field which is necessary in the case of seasoned entrepreneurs or particular professions	Possesses a specific industry diploma from an institution recognized in Kenya with a minimum of Ten (10) years practical experience in the relevant field	**Not accepted.** For managerial or similar roles, a university degree is necessary.
33.	Part III 7	The Steering Committee shall—	To avoid vagueness and affirm clarity and accountability in line with The Code of Governance for State Corporations	The Kenya Guarantee Scheme Limited Board shall—	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
34.	Part III 8(II)	The administrator of the Scheme shall be the Cabinet Secretary or any other person designated by the Cabinet Secretary in writing for that purpose.	As highlighted in Sub Regulation No. 7 (b), (c) and (d), The role of the Steering Committee (Board as per our Amendment No. 6) is to advice the Cabinet Secretary, who is proposed to be	The administrator of the Scheme shall be the Chairman appointed by the President from the nominees to the Kenya Credit Guarantee Scheme Limited Board.	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.

			the administrator of the Scheme (as per No. 8 (1)). This will not be prudent owing to the nature of the scheme, corporate governance accountability and intensity of other responsibilities of the Cabinet Secretary, thus it is needed for the board to have a Chairman answerable to the Cabinet Secretary responsible and a Chief Executive Officer selected from the Board to handle operations of the Kenya Credit Guarantee Scheme Limited.		
35.	Part III 9 (I)	The day to day operations of the Scheme shall be undertaken by a Scheme Manager and staff appointed by Cabinet Secretary.	In line with the Code of Governance for State Corporations, the day to day operations of the Kenya Credit Guarantee Scheme Limited should be undertaken by a Chief Executive Office appointed by the Board members to ensure accountability and professional execution of the Kenya Credit Guarantee Scheme Limited	The day to day operations of the Kenya Credit Guarantee Scheme Ltd shall be undertaken by a Chief Executive Officer appointed by the board	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
36.	Part III 9 (I)	The Scheme Manager and staff of Scheme shall be appointed by the Cabinet Secretary from among the officers of the Ministry responsible for matters relating to finance.	Considering the objects of the Kenya Credit Guarantee Scheme Ltd, it aims to serve MSME's nationally and achieve its objects, it is therefore, imprudent for the selection of the individuals to manage day to day operations to be limited to the experience and	The Chief Executive Officer of the Kenya Credit Guarantee Schemes Ltd shall be appointed by the Board from experienced members of the public who are eligible for membership of the board in	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.

			knowledge of the Ministry relating to finance. Hence the role should be open to applications from experienced individuals who are eligible to sit in the board.	line with the criteria laid down in Chapter 6 of the Constitution of Kenya	
37.	Part III 10 (1) h	does business in Kenya; and	The limitation for MSME's operating only in Kenya is limiting as registered Kenyan business are allowed by practice to create employment through exportation of goods and services therefore, the applicability of the Kenya Credit Guarantee Schemes Ltd should facilitate acquisition of foreign exchange through conducting business locally and globally as long as ownership is fully Kenyan through birth or nationalization	Does business locally and internationally; and	**Not accepted.** Exporter MSMEs are not locked out in the regulations.
38.	Part III 10 (1)	Addendum (1) j	In order to ensure self-regulation, validation and credible confirmation of entities enrolled in the scheme, these entities must be members of their specific sector trades and/or professional associations to be replaced with the chief executive officer	Are registered members of good standing of their specific sector trades and/or professional associations	**Not accepted.** The guarantee scheme is not intended to lock out MSMEs whether or not they are members of associations.
39.	Part III 15 (1)	A participating financial intermediary shall submit daily reports to the board on the credit guarantees issued under these	Considering the process involved in the execution of the Credit Guarantee Schemes, Daily reports will not be a conclusive and comprehensive indicator of the execution progress therefore,	Participating financial intermediaries shall submit weekly, monthly, quarterly, semiannual and annually to the board and cabinet secretary.	**Not accepted.** The reporting frequency has been adjusted to monthly. There is no reference to board in regulation 15.

		Regulations.	weekly, monthly, quarterly and semi-annual reports to be issued		
40.	Part III 15 (1)	Administrator may prescribe additional conditions.	In line with proposed changes highlighted above, the Board will be the mandated body to prescribe any changes or additional conditions	The board may prescribe additional conditions	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
41.	Document Changes	The steering committee	In line with changes highlighted above to be replaced with Board	The Board	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
42.		The administrator	In line with changes highlighted above to	The Chief Executive Officer	**Not accepted.** The scheme is not a body corporate, and, therefore, it is not intended to have a board.
MICRO AND SMALL ENTERPRISE AUTHORITY (MSEA)					
43.	2	(not provided/should include)	Objects of the Scheme are geared towards boosting micro and small enterprises.	"A micro or small enterprise is an enterprise as defined under the Micro and Small Enterprises Act No. 55 of 2012"	**Not accepted.** The definition is already provided in the amended Act.
44.	10(1)	Eligible borrowers	Objects of the Scheme are geared towards boosting micro and small enterprises	Distinguish between the requirements for micro (informal), small and medium enterprises	**Not accepted.** The law as amended defined the beneficiaries and the regulations cannot supersede the Act.

			In light of the dynamic nature of operations of informal micro enterprises, the Regulations should exclude unnecessary licensing hurdles to credit access. Credit-worthy criteria should be sufficiently and favorably defined to the inclusion of start-ups and micro enterprises.	"A micro (small) enterprise borrower shall be eligible for guarantee under the Scheme if the borrower:- a) Is a micro (small) enterprise as defined in these Regulations Has been registered by the Registrar of Micro and Small Enterprises, a county government or any other relevant government body and holds a valid registration certificate, business permit or trade license c) *retain regulation 10 (e) (f) (h) and (i)"	
45.	10(2)	A guarantee for a credit facility under paragraph (1) shall be for a portion of the credit facility	The provision is ambiguous on what portion of credit can be guaranteed for micro enterprises. In line with the objects, provide the apportionment percentages with particular incentives for credit to micro and small enterprises.	Add the provision:- "A guarantee for a credit facility to a micro (small) enterprise shall be for a portion of (90%) of the credit facility"	**Not accepted.** It is not advisable to prescribe the risk-sharing arrangement in the regulations. This will allow for flexibility in the implementation of the scheme. In addition, the scheme is not intended to exclude medium sized enterprises since the law provides for them.

46.	11	(not provided/should include)	Ineligibility for borrowers previously implicated in financial misappropriation/misconduct	"A borrower shall not be eligible for a credit guarantee under the Scheme if— (h) The borrower has a record of financial misappropriation or fraud"	**Not accepted.** This is a matter which can be handled by the PFIs.
47.	12(1)	(not provided/should include)	Provisions to ensure sustainability of participating intermediaries	"A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary— (i) has experience of at least 3 years in extending and managing credit facilities to micro, small and medium enterprises; (iii) has a record of an updated credit policy in favour of lending to micro and small enterprises"	**Not accepted.** This is already provided for in regulation 12 (1) (c)
48.	16(2)	Administrator may prescribe additional conditions	Include additional conditions that secure credit facilities to micro enterprises	"Without prejudice to the generality of subsection (1), such additional conditions may include the— (h) requirements for participating intermediaries to provide (--%) lending to micro and small enterprises as defined in these Regulations"	**Not accepted.** The scheme is focused on micro, small and medium enterprises. The law has provided for disaggregated monitoring of the beneficiaries to inform policy decisions on

					implementation of the scheme.
		INSTITUTION YOUTH ENTERPRISE DEVELOPMENT FUND			
49.	**PART I— PRELIMINARY**	**"financial intermediary" means a commercial bank, microfinance institution, registered non-governmental organisations involved in financing, and savings and credit co-operative society;**	To include government institutions involved in financing	*"financial intermediary" means a commercial bank, microfinance institution, registered non-governmental organisations involved in financing, **government agencies involved in financing** and savings and credit co-operative society;*	**Not accepted.** The scheme will support financial institutions. Other mechanisms may be considered to loop in other players in MSME financing. The National Treasury proposed deletion of "registered NGOs" from the original provision.
50.	**10.1 (f)**	**10. (1) A borrower shall be eligible for guarantee under the Scheme if the borrower —** **(f) Intends to use the credit advanced for business purposes, including.....** **(i) working capital**	To include enterprises involved in public procurement of goods and services through tendering	**10. (1) A borrower shall be eligible for guarantee under the Scheme if the borrower —** **(f) Intends to use the credit advanced for business purposes, including.....** **(i) working capital requirements of the enterprises;** **(ii) public procurement of goods and services through LPO/LSO financing**	**Not accepted.** It is the considered view of the National Treasury that public procurement of goods and services through LPO/LSO financing is covered under "working capital requirements."

		requirements of the enterprises; **(ii) acquisition of assets; or** **(iii) rebuilding businesses affected by natural disasters or other financial crises;**		**(ii) acquisition of assets; or** **(iii) rebuilding businesses affected by natural disasters or other financial crises;**	
KENYA BANKERS ASSOCIATION					
51.	**2**	Interpretation	There is need to define Micro, Small, and Medium sized enterprises for clarity regarding the targeted clients. Micro and Small enterprises (MSEs) are defined under the Micro and Small Enterprise Act of 2012. Micro enterprises have a maximum annual turnover of KES 500,000 and employ less than 10 people. Small enterprises have between KES 500,000 and 5 million annual turnover and employ 10-49 people. However, Medium enterprises are not covered under the Act.	**"Micro Enterprises"** has the meaning assigned to it under section 2 of the Micro and Small Enterprise Act of 2012. **"Small Enterprises"** has the meaning assigned to it under section 2 of the Micro and Small Enterprise Act of 2012. **Medium enterprises** means and enterprises having a maximum annual turnover of Kes********* and employs ***** number of people.	**Not accepted.** Micro, small and medium enterprises are already defined under the amendment Act.

52.	**6(1)(f)**	Composition of the Steering Committee	Commercial Banks are key stakeholders in operationalizing the Credit Guarantee Scheme.	To have a representative for commercial banks nominated by Kenya Bankers Association.	**Not accepted.** Representation of commercial banks in the steering committee is likely to result into a conflict of interest since they are also lending under the scheme.
53.	**10 (1)**	(1) A borrower shall be eligible for guarantee under the Scheme if the borrower – (b) is registered as a business or company under the relevant laws.	MSMEs encompass both formal and informal business concerns. MSMEs operating outside formal business registration (mama mboga) are at a risk of being left out.	(1) A borrower shall be eligible for guarantee under the Scheme if the borrower – (b) (i) is registered as a business or company under the relevant laws. (ii) has a valid operating license.	**Not accepted.** The proposal goes beyond the eligibility criteria as already set out in the amended Act.
54.	**11(a)**	**Ineligible borrowers** A borrower shall not be eligible for a credit guarantee under the Scheme if – the credit facility relates to risks which are already covered by the Government, any other credit guarantee, insurer or indemnity, to the extent so covered;	**Clarity sought:** As a risk mitigation, commercial banks take Credit Life insurance for Sole proprietors and Partnerships; does this credit life insurance disqualify these entities from the scheme?	There is need for clarification on the provision of this section.	**Clarification:** Credit life insurance for facilities advanced to MSMEs will not disqualify the entities from the scheme. The National Treasury proposes redrafting a separate regulation to ensure incase credit life insurance is called on, the guarantee facility is relieved.

55.	11(c)	**Ineligible borrowers** A borrower shall not be eligible for a credit guarantee under the Scheme if— … (c) the borrower already enjoys a credit guarantee for another credit facility under these Regulations and the lending institution has invoked the guarantee;	A bank is not able to determine if the borrower enjoyed a credit guarantee with another bank which had been invoked.	(c) the borrower is listed on a registered credit reference bureau for defaulting on a credit facility guaranteed under the Scheme and in respect of which the lending institution invoked the guarantee.	**Not accepted.** This is a matter which the lender should manage.
56.	11(d)	**Ineligible borrowers** A borrower shall not be eligible for a credit guarantee under the Scheme if - (d) the borrower has been sanctioned by a financial intermediary against collateral security or third-party guarantee;	**Clarity sought:** Does this apply to those clients with existing debt that is secured and are seeking top-ups under this scheme?	There is need for clarification on the provision of this section. (d) the borrower has been listed by a financial intermediary on a registered credit reference bureau for defaulting on a credit facility;	**Not accepted.** This is a matter which should be managed by the lender.
57.	12(1)(c)	1) A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary – (c) commits to extend credit facilities to micro, small and medium enterprises which shall be	With the guarantee aiming to address collateral limitation, the collateral gap left by the guarantee should be easy to bridge by the MSMEs to raise the guarantee absorption rate.	(1) A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary – (c) commits to extend credit facilities to micro, small and medium enterprises where the	**Not accepted.** It is not advisable to prescribe the exact product features in the regulations. However, these will be included in the operational manuals and service level agreements.

		at least four times the amount that the Scheme will guarantee;		guarantee shall cover at least 75% of the extended amount;	
58.	**12(1) (d)**	d) Has a wide geographical network.	What is the definition of wide geographical network (2, 3 or 20 branches)? This provision is restrictive i.e. third tier Banks with two branches may not be given the chance to participate in the scheme.	To delete the provision	**Not accepted.** This criteria helps the scheme reach all regions as provided for in the Act. In addition, wide geographical network is not only brick and mortar but also presence in the digital platform.
59.	**14(2)**	**14. (2)** The participating financial intermediary shall not use more than one per cent of **guarantee funds available** on any single individual micro, small or medium enterprise.	The "guarantee fund" has not been defined. If the same refers to an individual Bank's allocation of the guarantee funds to be provided by the Government, it means that different Banks will be able to advance different amounts to their respective borrowers under the Credit Guarantee Scheme depending on their allocation. Further, it is not clear if the amount will be revised upwards once the Government provides an additional guarantee amount after the initial KES 3 billion is exhausted.	Delete the provision. Alternately, the following clause can be considered: The participating financial intermediary shall not use more than KShs.10, 000,000/= of guarantee funds available on any single individual micro, small or medium enterprise.	**Not accepted.** The regulations are required to prescribe the maximum percentage value according to the amended Act Sec. 58(9)(h). This will reduce the concentration of risks and increase the number of Kenyans who can benefit from the guarantees. However, the maximum value of a loan will grow with funds available for guarantees to each financial intermediary.

			The proposal is to delete the provision.		
60.	**14(4)(d)**	(4) The participating financial intermediary shall – (d) ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and manner specified by the Scheme without delay.	For uniformity purposes, there is need to have standard reporting templates for use by all PFIs. For planning purposes, there is need to have a clear time frame for all claim settlements lodged with the Scheme.	(4) The participating financial intermediary shall – (d) ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and manner specified by the Scheme without delay; (i) The template to be used in lodging the guarantee claim forms part of the annex to this document. (ii) The said guarantee claim shall be payable not later than 60 days from the date of lodgment.	**Accepted with modification.** The National Treasury proposed deletion of "without delay" in 14 (4) (d) and adding a new provision "The said guarantee claim shall be payable not later than 60 days from the date of lodgment." The claims form will be provided in the manuals and service level agreements.
61.	**14(7)**	(7) Any recoveries made on a defaulted credit facility after a guarantee has been paid shall be shared between the participating financial intermediary and the Scheme in line with the risk-sharing formula.	i) It is proposed that the amount to be shared between the participating financial institution (PFI) and the Scheme should be net of all reasonable expenses incurred in the recovery to incentivize PFIs to actively pursue recovery	the participating financial intermediary shall be entitled to deduct all reasonable expenses incurred in the recovery; (b) the credit loss on a defaulted credit facility and the net amount recovered after deducting all reasonable expenses shall be shared between the participating financial intermediary and the Scheme on a **50:50** basis	**Accepted.** The National Treasury proposed redrafting to clean the proposal. Add "the PFI will maintain a record of all expenses incurred in the recovery process"

			ii) The Scheme's share should be capped at guaranteed amount paid by the Scheme iii) It is proposed that the risk sharing formula be defined as per the Tender document	provided that the Scheme's share on a recovery shall not exceed the guaranteed amount paid by the Scheme.	
62.	**14(11)**	(11) A participating financial intermediary may invoke the guarantee in respect of a credit facility if the following conditions are satisfied – (a) the amount in default in respect of the credit facility has not been paid and the facility has been classified as non-performing;	IFRS 9 requires that all tangible collaterals be discounted for the purposes of loan provisioning.	(11) A participating financial intermediary may invoke the guarantee in respect of a credit facility if the following conditions are satisfied – (a) the amount in default in respect of the credit facility has not been paid and the facility has been classified as non-performing; (i) the guarantee under this scheme shall be considered as tangible collateral for the purpose of discounting under IFRS 9 requirements on provision.	**Not accepted.** The scheme is a sovereign guarantee and the provisioning for such is well anchored in both IFRS 9 and CBK Prudential Guidelines (3 on Capital Adequacy) as being proposed here. Classification of assets is without the mandate of the regulations.
63.	**14(12)**	(12) The claim shall be preferred by the financial intermediary in such manner and within such time as may be specified by the Steering Committee.	The benefits of the credit guarantee scheme will easily be transferred to borrowers if the Scheme pays the amount invoked under a guarantee timeously.	(a) The Scheme shall settle the amount of the guarantee invoked by a participating financial intermediary in respect of an amount under default	**Accepted with modification.** The National Treasury proposes that proposal (b) is dropped. A sovereign guarantee will still benefit the PFIs

				within sixty (60) days of demand; (b) any amount of the guarantee that is invoked and remains unpaid after 60 days shall accrue interest at the monthly rate of 1% pro-rated until settlement by the Scheme	since their capital will not be impaired for covered facilities.
64.	**15(1) & (2)**	15. (1) A participating financial intermediary shall submit daily reports to the Administrator on the credit guarantees issued under these Regulations. (2) A participating financial intermediary submitting a report on credit guarantees shall submit the report not later than seven days of the end of the previous month.	There are contradictions on the frequency of the reports whether they would be submitted daily or monthly	15. (1) A participating financial intermediary shall submit monthly reports to the Administrator on the credit guarantees issued under these Regulations. (2) A participating financial intermediary submitting a report on credit guarantees shall submit the report not later than seven days of the end of the previous month.	**Accepted.**
65.	**SLA – 3.5**	ARTICLE 3: THE FACILITY – The Scheme shall operate at a portfolio level and the Bank shall target to attain a prudent	Does this mean the expectation on the PFI is to grow beyond the guarantee fund by a minimum of 4 times?	There is need for clarification on the provision of this section.	**Clarification:** Yes, with a maximum cover of 25% for each facility, the total amount of credit advanced based on this security will be

		cumulative leverage potential of not less than four (4) times leverage of the total amount of Risk Sharing Funds allocated to the Bank.			at least four times of the guarantee funds available.
66.	**SLA - Annex A: Product Description**	Credit Facility Terms - Grace period: up to 5 months of no payment or interest only payments determined by the borrower's current cash flow.	Is the PFI mandated to provide a 5 months Grace period or the PFU has flexibility on this e.g. can a PFI extend a maximum of 1-month Principal moratorium?	There is need for clarification on the provision of this section.	**Clarification:** Yes, the PFI and the borrower can agree on the length of the moratorium but not more than 5 months.
67.	**SLA - Annex A: Product Description**	MSF Pricing (guarantee fees) - No guarantee fee	Is the PFI allowed to charge processing/ arrangement fees?	There is need for clarification on the provision of this section.	It is not clear what these charges are. The internal processes of the PFI are not affected by the scheme. However, there is not cost related to the guarantee, and therefore the borrower should not be charged a fee in relation to the guarantee and should also get better terms.
68.	**SLA - Annex B: MSF Eligibil**	(2) Borrowers may operate in any sector of the economy and must meet specific requirements to qualify for the MSF. These	What specific document is required from the MSME's as evidence of tax compliance?	There is need for clarification on the provision of this section.	**Clarification:** A tax compliance certificate.

	ity Criteria	requirements - are The MSME must be tax compliant;			
69.	**MSF Manual - Key Project Stakeholders**	(3) The National Treasury - The National Treasury will provide the initial funding of KES 3 billion for the MSF and enter into a Risk Sharing Scheme Agreement with Participating Financial Institutions (PFIs) that have been competitively selected through a set out criteria to implement the Risk Sharing facility.	Will the fund be used only for settlement of loss sharing or used as capital injection to lend to MSMEs?	There is need for clarification on the provision of this section.	**Clarification:** The scheme funds will be used for settlement of valid losses due to default and not as capital/liquidity injection for onward lending.
AFRICAN WOMEN STUDIES CENTRE, UNIVERSITY OF NAIROBI					
70.	2	**Interpretation Section**	Assumptions that MSMEs in Kenya comprise of men and women, PWDs, or youth in any equal or equitable manner would lead to the erroneous application of the provisions of these Regulations. It is very important that there be a desegregation of the potential beneficiaries of the Credit Guarantee Scheme – a peeling back of the corporate veil – so that an assessment can be made as to what extent the Scheme benefits Kenyans across	"Affirmative Action" means all the relevant and appropriate measures taken as well as devices employed to ensure the uptake of the products offered under this Credit Guarantee Scheme by marginalized persons among women, persons with disability, and the youth.	**Not accepted.** The term "Affirmative Action" has not been used in the regulations and therefore is not defined. The intention is to have inclusive regulations that cover all categories of MSMEs, including those owned by the marginalized persons.

			their diversity. For this reason, we propose an additional interpretive clause on Affirmative Action.		
71.	**3**	**Objects of the Scheme**	Inclusion of Clause targeting marginalized persons among women, persons with disability and the youth.	The objects of the Scheme shall be to— (d) target for inclusion at the rate of a minimum of 40% of all loans disbursed under this Scheme those micro, small and medium enterprises whose proprietors are marginalized persons among women, persons with disability and the youth through the use of relevant and appropriate Affirmative Action measures and devices.	**Not accepted.** This provision is already in regulations 14 (3) which is deemed to be sufficient.
72.	**6**	**(b) the Principal Secretary in the Ministry responsible for matters relating to micro, small and medium enterprises or the Principal Secretary's representative;**	There is a possibility that with changes brought about by Presidential Executive Orders that the Cabinet Secretary responsible for matters finance may also be the same one responsible for micro, small and medium enterprises or the Principal Secretary's representative; therefore, one slot in the Committee may lie vacant.	Review the composition of the committee with respect to the representatives of the proposed ministries to avoid the possibility that the representative of the Cabinet Secretary for finance may in future be the same one for MSMEs.	**Not accepted.** This will be resolved as and when it will emerge.
73.	6	**(e) three independent members, not being**	To ensure that the interests of marginalized persons are	(e)three independent members, not being public officers,	**Not accepted.** The interest of this has been

		public officers, appointed by the Cabinet Secretary who shall comprise of— (i) one person with experience in banking and finance; (ii) one person with experience in insurance; and one person with experience as an entrepreneur in a micro, small or medium enterprise.	continuously addressed and for that matter in step with the developments that take place in the state dynamically. Several clauses in the Constitution of Kenya highlight the importance of ensuring that marginalized persons are specifically targeted for inclusion in all spaces.	appointed by the Cabinet Secretary who shall comprise of— (iv) one person representing the interests of marginalized persons among women, persons with disability and the youth	addressed in regulation 14 (3).
74.	7	Functions of the Steering Committee.	In keeping with the proposal above, a clause should about the monitoring the uptake of loans using the credit guarantee scheme should be included as a function of the Committee in order to ensure the benefits of this Scheme reaching marginalized persons for real and in real ways.	The Steering Committee shall— Continuously monitor for improvement the uptake of loans from intermediary financial institutions by marginalized persons among women, persons with disability and the youth and make appropriate policies to provide for the use of affirmative action measures to elicit the participation of the aforesaid marginalized persons in the enjoyment of benefits available under the credit guarantee scheme through the	**Accepted.** (Improve)

				reduction or removal of any hindrances.	
75.	8 (2)(e)	Administrator of the Scheme. (2) The Administrator shall— (e) open an electronic ledger of all successful micro, small and medium enterprises, and participating financial intermediaries and maintain a record of the amount guaranteed, disbursed and the balances thereof;	To give meaning to the above theme modify this clause as follows in the adjacent column. Our proposal corresponds with the existing provision in Regulation 15(3)(d) concerning submission of reports on credit guarantee by financial intermediaries as follows: (3) A report submitted by a participating financial intermediary shall include information on—(d) the total value of credit guarantees given to the participating financial intermediary disaggregated into enterprises owned by women, youth and persons living with disability whose credit facilities have been guaranteed;	(2) The Administrator shall— (e) open an electronic ledger capturing the following among other details: (i) all successful micro, small and medium enterprises loan applicants indicating beneficiaries of the credit guarantee scheme from among marginalized including women, persons with disability, and the youth; (ii) all participating financial intermediaries; and (iii) a record of the amount guaranteed, disbursed and the balances thereof;	**Accepted with modification.** Regulation 15 (3) revised to cater for this information.
76.	10.	Eligible borrowers.	The sub-Regulations here comprise factors that are likely to prevent marginalized persons from among women, persons	**10.** (1) A borrower shall be eligible for guarantee under the Scheme if the borrower —	**Not accepted.** The marginalized persons will also qualify as owners of MSMEs described in the

			with disability and the youth from accessing the loans. For instance part (g) on credit worthiness. This has historically made it difficult and in fact impossible for the mentioned persons to access financial benefits offered by financial institutions including banks, SACCOs etc. For this very important reason, eligibility must include a clause that targets the said marginalized persons through affirmative action measures.	falls under the category of marginalized persons among women, persons with disability and the youth targeted for affirmative action measures aimed at inclusion into the credit guarantee scheme. (the policies to be made by the Committee as proposed in No. 5 regarding Regulation 7 above should examine the hurdles and means around them).	eligibility criteria. Regulation 14(3) captures this intention too to enhance inclusion of these groups.
77.	12	Eligible financial intermediaries.	To ensure compliance with the agenda of inclusion of the marginalized persons indicated above, it is essential that the commitment of financial intermediaries is obtained through requiring them to make provisions for the same. One way is by requiring them to have a desk that deals with this issue.	12. (1) A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary— has, or for the purposes of the credit guarantee scheme sets up, a desk that will deal with matters concerning the facilitation of loan applications for marginalized persons among women, persons with disability, and the youth using relevant and appropriate affirmative action measures provided by the Committee as well as devised by the financial intermediary itself.	**Not accepted.** The scheme does not have the mandate to compel PFIs to set up desks for marginalized groups. However, as a condition under the scheme PFIs are required to commit at least 30% of credit to these groups. The provision is deemed sufficient.

78.	13	Applications by financial intermediaries.		13. (1) An eligible financial intermediary which wishes to obtain a guarantee from the Scheme on part of a credit facility extended to a micro, small or medium enterprise from shall apply in writing to the Administrator. (2) The application under paragraph (1) shall indicate the— the percentage of loans under the guarantee scheme targeted towards marginalized persons among women, persons with disability and the youth accompanied by a report explaining the reasons for any percentages lower than 40%.	**Not accepted.** Although the historical data on PFI's lending to marginalized groups is important, the intention is to achieve the provision of 30% under regulation 14 (3) from the point of entering into agreement with GoK.
79.	14(3)	Conditions for guarantee by the Scheme. (3) The participating financial intermediary shall use at least thirty per cent of guarantee funds available on credit advanced to enterprises owned by women,	While this clause is much appreciated, we would argue that the percentage needs to be increased from 30% which exists in other ventures including Access to Government Procurement Opportunities to 40% if not more. The reason is that this Credit Guarantee Scheme exists to support enterprises that would	(3) The participating financial intermediary shall use at least forty per cent of guarantee funds available on credit advanced to enterprises owned by women, youth and persons living with disabilities.	**Not accepted.** Thirty percent is deemed reasonable for the time being, in line with the provision in AGPO programme.

		youth and persons living with disabilities.	otherwise not fit into the meaning of credit worthy persons to receive loans the majority of which would be enterprises headed by the marginalized indicated throughout this document. It would therefore be imperative that much more weight is placed on reaching them. It is also a fact that women distribute the benefits of their finances to more persons i.e. children, vulnerable persons, etc. and therefore require much more support to increase the same. If marginalized persons are able to make strides in their socio economic status, then the objectives of this Scheme will have been realized at the broadest level.		
80.	21	Offences and penalties. 21. (1) A person who— (a) wilfully applies any proceeds of a guaranteed credit facility to any purpose other than the purpose for which the credit was approved;.... commits an offence and is liable on conviction to a fine not exceeding five	This section, which targets the beneficiaries of the credit guarantee scheme, whose importance in instilling fidelity in the use of the resources obtained under the scheme is nonetheless quite harsh. We say so especially in respect of the marginalized persons referred to in this report who from time to time experience hardships brought about their very marginalization.	21. (1) A person who— (a) willfully applies any proceeds of a guaranteed credit facility to any purpose other than the purpose for which the credit was approved without the express permission of the financial intermediary;	**Not accepted.** The proposal to add the words "without the express permission of the financial intermediary" is not tenable.

		million shillings or to imprisonment for a term not exceeding two years or to both.	We therefore propose a modification that allows in extreme cases for permission to be sought from the financial intermediary for any variations.		
FSD KENYA					
81.	3) The objects of the scheme	The arrangement is such that the objects of the scheme (section 3) comes before the establishment of the scheme (section 4) yet the normal sequence is to establish an entity (the scheme) and then mention its objectives	Establishment of the scheme (S4) to precede the objects of the scheme (S3)		**Not accepted.** The objects ordinarily come ahead of the establishment. However, the National Treasury proposed an amendment to regulation 3 to read "objects of the regulations" for clarity.
82.	6(1) Steering committee	The composition of the steering committee leaves out a representative from the administrative function who may be well versed in the daily operations of the steering committee.	The scheme administrator should be part of the steering committee, even at a non-executive role		**Not accepted.** Since the scheme steering committee advises the scheme administrator who is the Cabinet Secretary /National Treasury & Planning, the proposal would constitute a conflict of interest.
83.	7) Function of the steerin	6(1) Suggests that the steering committee that is comprised of the Principal Secretary and the Governor of the	The function of the steerco should not include administration of the fund but rather governance, oversight and setting the policy direction.		**Not accepted.** This is already considered in the regulations as constituted. The steering committee is

	g committee	Central Bank will be tasked with the day to day running (administration) of the scheme. A more apt arrangement would be for the steering committee to be in charge of governance, oversight and policymaking and delegate the administration to another office/officer.			part of the governance arrangement tasked with oversight and policy matters.
84.	8) Administration of the scheme	8(1) States that the Cabinet Secretary (CS)or any other person designated by the CS shall be the administrator of the scheme. This is already conflicting with 6(1) that bestows administration to the steerco.	6(1) and 8(1) and 9(1) should be harmonized with a clear determination on who administers the scheme made.		**Accepted.** Delete "administered" in 6(1) and replace thereof "overseen".
85.	9(1) Scheme manager and staff	9(1) states that the day to day operations of the scheme shall be undertaken by a scheme manager. This suggests that the day to running of the scheme and the administration of the	There are currently 3 management levels: steerco, administrator and scheme manager. It is suggested that the position of the scheme manager be abolished, and the functions listed be undertaken by the administrator		**Not accepted.** The scheme administrator is the CS/NT&P, the scheme manager will undertake the day to day operations while the steering committee will provide oversight and policy direction.

		scheme are two separate functions			These roles are distinct and clear for the three levels.
86.	9(2) Scheme manager and staff	As is, the personnel running the scheme are to be appointed by the Cabinet Secretary from among the officers of the ministry responsible for matters relating to finance. This leaves staff from the CBK, which is involved in the management and implementation of the scheme and forecloses the recruitment of specialist resources, such as lawyers, IT or credit scoring experts whose services may be required at a later stage.	The appointment of staff to manage the scheme should not be restricted to the staff of the ministry for matters relating to finance but be open to any qualified person.		**Accepted.** Modification on the appointment of staff has been made in regulation 9(2).
87.	10(1) Eligible borrowers	The wording in some sections is different from the wording in the Act.	The exact wording in the Act should be used		**Accepted.**
88.	12)Eligible financial	The regulations use three terms interchangeably: financial intermediary, eligible financial intermediary and	The definition should be harmonized with the Act		**Accepted.**

	intermediary)	participating financial institutions			
89.	13(1) Applications by financial intermediaries	The section 13(1) requires an eligible financial intermediary which wishes to obtain a guarantee from the Scheme on part of a credit facility extended to a micro, small or medium enterprise to apply in writing to the Administrator. The drafting of this section suggests that an application should be made for each and every credit against which a guarantee is issued.	The drafting of the section should be enhanced assuming that the intention was not for an application to be made for each and every credit guaranteed, but for participation in the scheme.		**Accepted.**
90.	14(6) and 14(7) conditions for the guarantee by the	Sub-regulations 6 and 7 appear contradictory. While 6 acknowledges the debt as owing to the Government, 7 appears to allow the financial intermediary a share in the proceeds of recovery after a guarantee has been paid. This suggests some form of 'double-	The financial intermediary should not share in the proceeds of a recovery after the guarantee has been paid off. The claims process should be a substantive standalone section.		**Not accepted.** The scheme will cover only a portion of the losses due to default and therefore the recoveries will be shared according to the risk sharing formula. However, a new regulation has been inserted to provide for the claim process.

	scheme	dipping' by the financial intermediary.			
91.	15(1) Submission of reports on credit guarantee	15(1) requires that a participating financial intermediary shall submit daily reports to the administrator on the credit guarantees issued under the regulations. However, the financial intermediaries will not issue guarantees. It is the scheme that will issue guarantees for credit that has been advanced by the financial intermediaries	The section should be redrafted. The participating financial intermediary should submit reports on the number and values of loans/credit advanced for which a guarantee has been granted		**Accepted.** 15(1) has been amended by replacing "guarantees" with "facilities." In addition, 15(3) (a) has been amended by replacing "guarantees" with "facilities".
92.	15(1) and 15(2) Submission of reports on credit guarantee	15(1) requires participating financial intermediaries to submit daily reports while 15(2) gives a provision for reports to be submitted no later than 7 days of the end of the previous months, suggesting monthly submission	The two subsections should be harmonized. For the purpose of risk and portfolio monitoring, a duration shorter than one month should be considered.		**Accepted.** Regulation 15(1) has been amended by replacing "daily" with "monthly."
93.	18(3) Annua	18(3) states that the annual estimates shall be approved by the Steering	Redrafting to reflect the CS as the one approving the estimates.		**Accepted.**

	l estimates of the scheme	Committee before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in the National Assembly. As the steerco is responsible to the CS, the steerco should recommend the estimates for CS's approval for onward submission to Parliament			
94.	21(1)(d) Offences and penalties	A fine not exceeding KShs 5m or a term not exceeding KShs 2m has been prescribed, while the maximum fine that may be imposed in a subsidiary legislation is KShs 20,000 or an imprisonment term not exceeding 6 months, as per the Statutory Instruments Act (SIA)	The penalties be harmonized with the provisions in the SIA		**Not accepted.** The Act quoted (Statutory Instruments Act) is not the relevant statute with respect to penalties under subsidiary legislation. However, the provision has been amended to align with the PFM Act.
95.	Additional comments	The role of the CBK in the management and implementation of the scheme to be reflected.			These regulations are anchored on the PFM Act and hence cannot allocate more roles to CBK besides those provided under the

		A section on the risk strategy, claims procedure and dispute resolution should be considered			statutes which the Bank administers. This proposal is not acceptable for the regulations, except for claims procedures.
IDB CAPITAL LIMITED (received on 3rd September 2020)					
96.	**2**	"financial intermediary" means a commercial bank, microfinance institution, registered non-governmental organisations involved in financing and savings and credit co-operative society;	The definition has excluded Development Finance Institutions (e.g. Kenya Industrial Estate, IDB Capital Limited, Industrial and Commercial Development Corporation) yet these institutions have played a significant role in the financing of SMEs in Kenya	Financing intermediary" means a commercial bank, development finance institution, microfinance institution, registered non-governmental organisations involved in financing, and savings and credit co-operative society	**Not accepted.** Participation of institutions not included in this definition can be considered by CS/NT&P on a case by case basis as provided in regulation 12 (1) (a).
CENTRAL BANK OF KENYA (received on 3rd September 2020)					
97.		**Definition of MSME**	The draft Regulations do not provide for the definition of Micro, Small and Medium Enterprises (MSMEs) despite MSMEs being the main objective of the scheme.	Clause 2 (Interpretation) should at least specify what exactly constitutes an MSME or in the alternative stating the statutory provision under which the term is defined.	**Not accepted.** Since the definitions are already provided in the PFM Act, it is not necessary to restate them in the regulations.
98.	**Clause 2**	**Definition of enterprise**	This includes both formal or informal business entity. Whereas Clause 10 (1) (b) refers to registered enterprises.......the word "informal" as used in the definition might therefore be construed as "not registered" and	The definition of "enterprises" should be reconsidered.	**Accepted.** The interpretation of "enterprise" has been amended by deleting "either formal or informal"

			this needs to be clear. In the body of the Regulations, the term "enterprise" is used as a stand-alone term, which gives the impression that the Regulations also cover unregistered/informal business entities/enterprises		
99.	**2**	**Clause 2 -has expanded the Financial intermediaries**	to include commercial banks, microfinance institution, registered non-governmental organisations involved in financing, and savings and credit co-operative society. This is quite in order as it will benefit as many enterprises as possible given the scheme's funds are drawn from public coffers. However, Clause 12(1)(a) restricts these intermediaries to those licensed by CBK and gives the Cabinet Secretary powers to designate other institutions as intermediaries.	This is inconsistent with the clear definition of 'financial intermediary" in Clause 2.	**Not accepted.** Regulation 12 (1) (a) empowers the CS/NT&P, upon recommendation by steering committee, to determine other institutions not defined to participate in the scheme. There is no inconsistency. The National Treasury proposed amending 12 (1) (a) by adding "on the advice of the steering committee" at the end.
100.	**Clause 6**	**membership to the Steering Committee**	which includes independent persons but does not provide for tenure (period to serve 3-4-years etc).	This should be provided for.	**Accepted.** Tenure for the independent members not exceeding 3 yrs renewable once based on performance proposed as a subregulation.

101.	**Clause 6(e)**	**appointment of independent members**	on the appointment of independent members to the Steering Committee should make it clear that the independent members will be appointed through a competitive process, in line with the requirements of the Constitution	Appropriate amendment to Clause 6 should be introduced.	**Not accepted.** The competitive process of appointment is already provided for in the Constitution.
102.	**Clause 7 (c-d)**	**mandates the Steering Committee to recommend "non-bank" institutions**	to be considered as participating financial intermediaries. "Bank" institutions have not been defined. The definition of "financial intermediary" already includes "non-bank" institutions	Clause 7(c) & (d) should be reconsidered	**Not accepted.** The definition of banks is already provided in the Banking Act.
103.	**Clause 11**	**ineligible borrowers**	The Clause should also grant the Steering Committee the power to add more conditions.	The ineligibility criteria in the Clause has left out some conditions which are already in operational documents	**Not accepted.** The concern has been catered for in regulation 16.
104.	**Clause 12(1)(f)**	**refers to market average non-performing loans.**	The market alluded to has not been defined and the institution to avail such data has not been disclosed.	The clause should be made clearer	**Accepted.** 12 (1) (f) has been amended to read as follows "has maintained a portfolio quality that is above the minimum level set by the Steering Committee on credit facilities that have been extended to micro, small and medium enterprises"
105.	**Clause 13(2)(e)**	**refers to geographical distribution with**	This is contrary to Clause 12 (1)(d) on eligible criteria that focuses on geographical network which can	The two Clauses should be reconciled	**Accepted.** Regulation 12(1) (d) amended to read "has a wide

		emphasis on branch network.	be by way of access points eg bank agents, ATMs, POS terminals, etc		geographical branch network"
106.	**Clause 14(2)**	**Lending limits**	*Participating financial intermediary (PFI) shall not use more than one per cent of guarantee funds available on any single individual MSMEs.* This Clause is clear on which funds are being referred to. Are these the funds allocated to the PFI under the scheme or the overall funds available under the CGS?	If its the former, then it could be unrealistic to implement	**Clarification:** The implementation of regulation 14(2) will be guided by the service level agreements.
107.	**Clause 14(1)(d)**	**Preferential interest rates**	It is stated that the financial intermediary shall provide access to affordable credit to the beneficiaries at preferential interest rates among other terms	There is need to define what preferential interest rate is.	Regulation 14 (1) (d) has been amended to read "provide access to affordable credit to the beneficiaries reflecting the lower risk of borrowers guaranteed by the scheme"
108.	**Clause 15 (1) & (2)**	**Submission of reports on credit guarantee**	Clause 15 (1) and (2) may cause confusion as Clause 15 (1) refers to reports being submitted daily and Clause 15 (2) not later than seven days of the end of the previous month. Are the reports being submitted monthly or daily?	It is important to note that daily reporting may be unduly onerous as financial conditions may not change much on a day-to-day basis.	**Accepted.** Frequency of reporting has harmonized as "monthly"
109.	**Clause 15(3)**	**Clause 15(3) should be amended**	to include submission of reports on geographical distribution of the loans guaranteed under the scheme	This will enable the Administrator monitor equitable	**Clarification:** The aspect of geographical distribution is deemed

				distribution of the guaranteed loans	to be covered under regulation 15 (3)
110.		**Risk Sharing Scheme**	This is a critical element to this arrangement yet there are no clear provisions on this.	It is necessary to include in the Regulations express and specific provisions on risk-sharing formula and matters related thereto.	**Clarification:** This is provided for in regulation 10 (2). The specific provisions and products will be contained in the service level agreement.
111.	**Clause 18(2)(b) & (c)**	**annual estimates of the Scheme provide for salaries and pensions of staff of the Scheme**	on annual estimates of the Scheme provide for salaries and pensions of staff of the Scheme and estimates on these two items should be provided for every year.	It is not clear whether this is necessary given that staff of the Scheme will be staff of the National Treasury {Clause 9(2)} who ordinarily should be paid their salaries and pensions by the National Treasury	**Clarification:** Regulation 18(2) has been amended accordingly.
112.	**Clause 21**	**Offences and penalties**	The Clause does not provide for offenses and penalties relating to financial intermediaries. It only provides for offences and penalties for borrowers.	The Clause should be expanded to include offences by participating financial intermediaries	It is not clear as to what other potential offences are being referred to with regard to financial intermediaries.
113.		**Information sharing of borrower's details**	While Clause 13(7)(f) requires the participating financial intermediary to include in the agreement with the borrower the right to share the borrowers' details and any other information provided by the borrower	It is necessary to make it clear in the Regulations that the agreement should expressly provide for the following, in addition to that general Clause: (a)The freedom of the lender (participating intermediary) to share borrower's personal details and financial information with:	**Clarification:** Regulation 13 relates to application for participation by financial intermediaries. It is the considered opinion of the National Treasury that the necessary information sharing requirements are sufficiently covered

				• The National Treasury • National Assembly • The Senate • A financial sector regulator • Any other public body or Government agency. • Any other person who lawfully needs the information (a)The freedom of the CBK or any other financial sector regulator to share borrower's personal details and financial information with: • The National Treasury • National Assembly • The Senate • Any other person who lawfully needs the information (a)The freedom of the National Treasury to share borrower's personal details and financial information with: • National Assembly • The Senate • Its duly appoint agent on matters relating to the scheme activities or the National Treasury's rights	under regulation 14 (8) (f). In addition, other information sharing requirements are sufficiently covered under other statutes including the Banking Act.

				and liabilities under the scheme • Any other public body or Government agency • Any other person who lawfully needs the information	
114.	The framework of the Regulations does not require the Steering Committee or the Administrator to undertake a public procurement to select participating financial intermediaries. They only need to meet the prescribed criteria to be eligible for participation. The CBK is privy to a planned procurement of the participating financial institutions by the National Treasury. This may fly in the face of the Regulations The paradox should be addressed **Comments by the National Treasury** The ongoing process with financial intermediaries is a selection process which is already anchored in law.				
THE WORLD BANK (received on 4th September 2020)					
115.	6(e)	Appointment of three independent members of the Steering Committee	The other members are term limited as the government will change, these members should also have a term limit.	(e) three independent members, not being public officers, appointed by the Cabinet Secretary *for a rotating*[1] *period of three years* who shall comprise of . . ."	**Not accepted.** These matters are handled administratively within the government.
116.	7(g)	Steering Committee will "*... review the criteria for issuance of credit guarantees under the Scheme*".	Clarify that certain criteria can be changed by the Steering Committee.	(g) review the criteria for issuance of credit guarantees under the Scheme including, but not limited to guarantee fee, maximum loan size, guarantee coverage rate, and credit standards defining eligible	**Accepted.**

[1] Meaning that the first person serving as the banking representative would serve for one year and the insurance executive for two years with the next person in each position serving three years.

				borrowers to be included in the scheme.	
117.	12(c)	(c) commits to extend credit facilities to micro, small and medium enterprises which shall be at least four times the amount that the Scheme will guarantee.	In the future, '*four times*' may not be the appropriate number.	(c) commits to extend credit facilities to micro, small and medium enterprises which shall be a multiple of the amount that the Scheme will guarantee. This multiple will be determined by the Steering Committee and announced to participating financial institutions from time to time.	**Not accepted.** It is the considered view of the National Treasury that a multiple of less than four times does not give value for the guarantee.
118.	12(f)	". . . has maintained a portfolio quality that is above the market average as demonstrated by low non-performing ratios on credit facilities that have been extended to micro, small and medium enterprises".	The problem here is the use of an average. If all lenders below average improve their portfolio, the average NPL will drop, possibly eliminating some lenders even though their NPL did not change. In the extreme, the average NPL could be lower than the scheme would like, which would also eliminate some PFIs. The Steering Committee can set this rate and give the scheme flexibility.	(f) has maintained a portfolio quality that is above the minimum level set by the Steering Committee on credit facilities that have been extended to micro, small and medium enterprises.	**Accepted.**
119.	13(2)(a)	(a) multiples of guarantee value the financial intermediary intends to extend to micro, small and medium enterprises.	Are you intending to have one multiple or more than one? We would recommend using one multiple as using more than one adds a level of complication to the scheme. Based on this	(a) the multiple of guarantee value the financial intermediary intends to extend to micro, small and medium enterprises;	**Accepted.**

			language, the bank would change the multiple later.		
120.	13(1)	(1) An eligible financial intermediary which wishes to obtain a guarantee from the Scheme on part of a credit facility extended to a micro, small or medium enterprise from shall apply in writing to the Administrator.	This language could be interpreted to require all of this information every time a guarantee was requested.	An eligible financial intermediary that wishes to participate in this Scheme that provides guarantees on credit facilities to a micro, small or medium enterprise from shall apply in writing to the Administrator.	**Accepted and amended appropriately.**
121.	13(3)	(3) Before an eligible financial intermediary is allowed to participate in the Scheme, the financial intermediary shall undertake in writing to submit to the Administrator reports on the value of credit extended to micro, small and medium enterprises under these Regulations in accordance with regulation 15.	Does regulation 15 refer to regulation 15 in these regulations? If yes, we are confused about the meaning of this provision. It asks for a report on the value of loans extended under this program, but the time period is before participation in the program. If this refers to another regulation 15, ignore this comment.		**Clarification:** Regulation 13(3) and 15 are consistent with each other.
122.	14(1)(d)	(d) Provide access to affordable credit to the beneficiaries at preferential interest rates among other terms.	(d) Section 14(1)(d) requires providing credit at preferential rates. given the experience in Kenya and other countries on the negative impact of interest	Edit the clause to read as follows: "(d) Provide access to affordable credit to the beneficiaries. Interest rates will be market-determined, but	**Accepted with modification.** Regulation 14 (1) (d) has been amended to read "provide access to affordable credit to the

			rate caps, we suggest that interest rates are based on market rates. The rates determined should be sustainable and cost covering for the participating financial institutions. To ensure affordability of all credit products in the market, the CBK can continue to play its regulatory role, including through ensuring banks apply risk-based pricing models.	PFIs will be required to apply risk-based pricing, reflecting the lower risk of borrowers guaranteed by the scheme"	beneficiaries reflecting the lower risk of borrowers guaranteed by the scheme"
123.	14(2)	The participating financial intermediary shall not use more than one per cent of guarantee funds available on any single individual micro, small or medium enterprise.	In Section 14(2), what does the word "available" mean in this use? Does it mean the amount available to the lender? Does it mean the amount available to the whole scheme? Also, as the amount "available" declines with usage the one percent amount will get smaller and smaller. This decision could be reserved for the Steering Committee.	The participating financial intermediary shall be subject to a limit established by the Steering Committee for the maximum amount of guarantee funds available on any single individual micro, small or medium enterprise.	**Accepted with modification.** Regulation 14 (2) has been amended by replacing "guarantee funds available" with "allocated portfolio"
124.	14(8)(e)	(e)ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the	The scheme may want to require written permission instead of notification. Notifications can get lost. The scheme will have more control if it knows if there are subordinate liens.	(e) ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any	**Accepted.** Replace "notifying the Scheme" with "advance written permission from the Administrator"

		guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor without **notifying** the Scheme in writing;		account not covered by the guarantee, with itself or in favor of any other creditor without **advance written permission** from the Scheme in writing.	
125.	15(1)	(1) A participating financial intermediary shall submit daily reports to the Administrator on the credit guarantees issued under these Regulations.	Do you really want and can you process daily reports? It would seem that weekly reports would be adequate until there is an automated system.	(1) A participating financial intermediary shall submit frequent reports to the Administrator on the credit guarantees issued under these Regulations. The frequency will be determined by the Steering Committee.	**Accepted with modification.** Frequency of reporting has been amended to "monthly."
126.	16(2)(a) and 14(2)	16(2)(a) maximum size of the credit facilities that may be guaranteed under these Regulations with respect to a credit facility or class of credit facilities; 14(2) The participating financial intermediary shall not use more than one per cent of guarantee funds available on any single individual micro, small or medium enterprise.	These seem to be addressing the same issue two different ways.	Suggest deleting 14(2). There were other problems with that language as well.	**Not accepted.** Regulation 16(2) deals with the size of credit that are eligible for guarantee while regulation 14(2) deals with the single obligor concerns.

127.	10 (1)(a)	A borrower shall be eligible for guarantee under the scheme if the borrower- is a micro, small or medium enterprise	During implementation, a more specific definition of MSMEs based on clear criterial will need to be developed.	Edit the clause as follows: "A borrower shall be eligible for guarantee under the scheme if the borrower-is a micro, small or medium enterprise (MSME). The definition of MSME based on clear criteria will be determined by the Steering Committee"	**Not accepted.** The definition of micro, small and medium enterprises is already in the PFM Act which the regulations cannot supersede.
128.	7(c)	evaluate applications for participation from non-bank institutions and advice the Cabinet Secretary	Minor typo—'advice' should be 'advise'.	Evaluate applications for participation from non-bank institutions and advise the Cabinet Secretary.	**Accepted.**
129.	12(2)	The Scheme shall enter into a written agreement with each eligible financial intermediary before the financial intermediary is allowed to participate in the Scheme which shall specify for how the financial intermediaries shall participate in the Scheme.	Minor typo—remove "for"	The Scheme shall enter into a written agreement with each eligible financial intermediary before the financial intermediary is allowed to participate in the Scheme which shall specify how the financial intermediaries shall participate in the Scheme.	**Accepted.**
130.	6	Administration of the scheme	There is currently no mention of the formation of a company that will eventually run the CGS beyond the MSF	Where a corporation is set up to run the CGS, then relevant corporate governance rules will apply with the need for a board of directors. This would need to be elaborated further	**Not accepted.** The regulations cannot establish a company.

				in the regulations as there is no mention of this.	
131.	14(d)	Provide access to affordable credit to the beneficiaries at preferential interest rates among other terms	(f) Same as in comment no. 8.	Edit the clause to read as follows: "(d) Provide access to affordable credit to the beneficiaries. Interest rates will be market-determined, but PFIs will be required to apply risk-based pricing, reflecting the lower risk of borrowers guaranteed by the scheme"	**Accepted with modification.** Regulation 14 (1) (d) has been amended to read "provide access to affordable credit to the beneficiaries reflecting the lower risk of borrowers guaranteed by the scheme"
132.	7(e)	Receive reports of the performance of the scheme	The regulations should specifically require the scheme to be formally reviewed and audited once year, which should form the basis for operational and financial performance evaluation of the scheme by the Steering Committee.	Edit the clause as follows: "Receive reports of the performance of the scheme **based on a formal operational and financial review and audit of the scheme, to be undertaken once per year.**"	**Not accepted.** The reporting in government is guided by various frameworks.
MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT					
133.	PART 1	Interpretation of MSMEs		An interpretation should be considered as provided in MSE Act 2012 for Micro and Small Enterprises and in the amended PFM Act 2020 on Medium Enterprises.	**Not accepted.** The definition of micro, small and medium enterprises is already in the PFM Act which the regulations cannot supersede.
134.	PART III	Administration of the scheme clause 6 subsection (1), e, (iii)	The section refers to an entrepreneur not a representative of organization of the sector. MSE	Consideration should be made to a person /official from a recognized national umbrella of	**Not accepted.** The proposal to have a representative from

			Sector is a different segment from the medium enterprises.	MSEs as a member of the Scheme Steering Committee as iv, and that representation of the Council of Governors is key for verifying eligible borrowers as provided for under clause (10) subsection 1, e.	MSEA is not tenable because members of the Steering Committee are not to be representatives of the associations but to provide overall policy direction for the credit guarantee scheme. The proposal that a representative of the Council of Governors sits in the steering committee is not tenable because the steering committee does not verify borrowers.
135.		Clause 6, subsection (2) a	Clause 6, subsection (2) a, seems to discriminate entrepreneurs who have a diploma level of education to be members of the Steering Committee. Most of the MSEs sector entrepreneurs possess lower qualification.	Change the education level to "diploma"	**Not accepted.** For managerial or similar roles, a university degree is deemed appropriate.
136.		Clause 9 subsections 1 & 2 on Scheme manager and staff		The National Treasury should consider advertising the jobs competitively.	**Not accepted.** The proposal is not tenable in the current arrangement.
137.		Clause 10 subsection 2 on eligible borrowers		Consideration to be made to qualify the portion in percentage	**Not accepted.** The details of the portions will be negotiated in the design and

					implementation of the Scheme.
138.		Clause 10 on eligible financial intermediaries subsection 1 (d)		Consideration may be made to financial institutions such as ICDC and IDB Capital that do not have a wide geographical network but have a major role on MSMEs across the country.	**Not accepted.** Participation of institutions not included in this definition can be considered by the Cabinet Secretary on a case by case basis as provided in regulation 12 (1) (a).
We would like to highlight that GoK considers:					
139.		Limiting the prescription of technical details in the regulation	to allow for flexibility and autonomy of the steering committee when the need arises. Such details include determinants of banks' portfolio quality, the criteria for the issuance of guarantees, the frequency of reporting by banks to the scheme, among others.		**Clarification:** This has been addressed.
140.		Adopting market led rates rather than preferential rates as outlined in the regulations	given the experience in Kenya and other countries on the negative impact of interest rate caps, we suggest that interest rates are based on market rates. To ensure affordability of all credit products in the market, the CBK can continue to play its regulatory role, including through ensuring banks apply risk-based pricing models.		**Clarification:** This has been addressed in line with the earlier comments.