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REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

DATE: 13 MAY 2021	DAY: THURSDAY
TABLED BY: <i>for tabling</i>	THE NATIONAL TREASURY P.O. Box 30007 NAIROBI
CLERK-AT-THE-TABLE: <i>A. Shabaka</i>	6 th May, 2021

Telegraphic Address: 22921
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Ref. No: AG. 13/88/VOL II (62)

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

Dear *Sialai,*



RE: THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2021, THE ATTENDANT REVOCATION ORDERS AND THE EXPLANATORY MEMORANDUM

The National Treasury & Planning has finalized the following statutory instruments and published them pursuant to the provisions of the Statutory Instruments Act, 2013 for tabling and approval by the National Assembly: -

- i. the Public Finance Management (Biashara Kenya Fund) Regulations, 2021;
- ii. the Public Finance Management (Uwezo Fund) Regulations, (Revocation) Regulations, 2021;
- iii. the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021; and
- iv. the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021.

Accordingly, the National Treasury and Planning hereby transmits the published Regulations, the above attendant Revocation Orders and the Explanatory Memorandum to facilitate tabling and approval by the National Assembly.

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

Yours *Sincerely,*

**HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/ THE NATIONAL TREASURY & PLANNING**

Copy to: **Dr. Joseph Kinyua, EGH**
The Head of Public Service
The Executive Office of the President
State House
NAIROBI

Prof. Margaret Kobia, PhD, MGH
Cabinet Secretary
Ministry of Public Service and Gender Affairs
NAIROBI

Mr. Joe Mucheru, EGH
Cabinet Secretary
Ministry of ICT, Innovation & Youth Affairs
NAIROBI

Hon. (Rtd) Justice Paul Kihara Kariuki, EGH
Attorney General
State Law Office & Department of Justice
NAIROBI

Ms. Wanjiku Wakogi
Secretary
State Corporation Advisory Committee
NAIROBI

LEGAL NOTICE NO. 55

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2021

1. These Regulations may be cited as the Public Finance Management (Biashara Kenya Fund) Regulations, 2021. Citation.

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

“Administrator” means the Chief Executive Officer appointed under regulation 11 or any other person designated by the Cabinet Secretary, in writing for that purpose;

“agent” means a microfinance institution, registered non-governmental organisation involved in financing, savings and credit co-operative organisation, registered group or any other institution approved by the Oversight Board;

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

“Cabinet Secretary” has the same meaning as assigned in section 2 of the Public Finance Management Act, 2012;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities”.

“enterprise” means an undertaking or a business concern, whether formal or informal, engaged in the production of goods, provision of services or trade in goods;

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

“Fund” means the Biashara Kenya Fund established under regulation 3;

“medium enterprise” has the same meaning as assigned in section 2 of the Public Finance Management Act, 2012;

“micro enterprise” means a firm, trade, service, industry or a registered business—

- (a) whose annual turnover does not exceed five hundred thousand shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;
 - (ii) the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings;

“Oversight Board” means the Oversight Board constituted under regulation 8;

“small enterprise” means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover ranges between five hundred and five million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and
 - (ii) service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five million and twenty million shillings;

“women” means female persons aged eighteen years and above; and

“youth” has the meaning assigned to it under Article 260 of the Constitution.

PART II — ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Biashara Kenya Fund. Establishment of the Fund.

4. (1) The Fund shall consist of— Sources of the Fund.

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income-generated from the proceeds of the Fund;
- (c) income from investments made by the Fund;

- (d) grants, donations, bequests or other gifts made to the Fund; and
 - (e) monies from any other source approved by the Cabinet Secretary.
- (2) The proceeds in the Fund shall be apportioned as follows—
- (a) an amount not exceeding thirty-five per cent to women;
 - (b) an amount not exceeding thirty-five per cent to youth;
 - (c) an amount not exceeding ten per cent to persons living with disability;
 - (d) an amount not exceeding seventeen per cent to micro, small and medium enterprises; and
 - (e) an amount not exceeding three per cent to administration costs.

(3) The Board may recommend the variation of the thresholds with the concurrence of the Cabinet Secretary for the time being responsible for gender, in consultation with the Cabinet Secretary for the time being responsible for youth, and approval of the Cabinet Secretary responsible for finance for use in any financial year.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established. Expenditure of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates prepared by the Administrator of the Fund and recommended by the Oversight Board to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary responsible for finance, at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Oversight Board and the Cabinet Secretary for approval.

6. The initial capital of the Fund shall be 2.5 billion shillings appropriated by Parliament in the financial year 2020/2021 and additional capital of the Fund shall be made in the subsequent financial years' budgets. Capital of the Fund.

7. The object and purpose of the Fund shall be to— Object and purpose of the Fund.

- (a) expand access of finances in promotion of women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for economic growth towards the realization of the goals of Vision 2030;
- (b) provide loans to credible micro-finance institutions, registered non-governmental organizations involved in financing, and savings and credit co-operative organizations for on-lending to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises;

- (c) provide loans directly to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for entrepreneurship development,
- (d) attract and facilitate investment in micro, small and medium enterprises oriented infrastructure such as business, markets or business incubators that will be beneficial to youth, women, persons with disability enterprises or groups and micro, small and medium enterprises,
- (e) support women, youth and persons with disability enterprises or groups and micro, small and medium enterprises to develop linkages with large enterprises;
- (f) facilitate marketing of products and services of youth, women, persons with disability enterprises or groups and micro, small and medium enterprises in both domestic, regional and international markets,
- (g) facilitate mainstreaming of the interests of the women, youth and persons with disability enterprises or groups and micro, small and medium enterprises in bilateral and international trade, investment and agreements,
- (h) support capacity building of the beneficiaries of the Fund and their institutions through training, incubation, mentorship, start-up support and promotion of innovation and development of products,
- (i) facilitate periodic market surveys and data analysis to identify industry opportunities for women, youth, persons with disability enterprises or groups and micro, small and medium enterprises, and
- (j) promote, develop and facilitate access to government procurement opportunities by women, youth and persons with disability enterprises or groups and micro, small and medium enterprises

PART III — MANAGEMENT OF THE FUND

8 (1) There shall be a Board to be known as the Oversight Board Oversight Board
which shall consist of—

- (a) a non-executive Chairperson appointed by the President,
- (b) the Cabinet Secretary to the National Treasury or his representative, designated in writing,
- (c) the Principal Secretary of the State Department for the time being responsible for gender affairs,
- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to youth,
- (e) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and medium enterprises, and
- (f) three other persons, not being public officers, of whom one

person shall be nominated by the Cabinet Secretary for the time being responsible for matters relating to youth affairs and the Cabinet Secretary, appointed by the Cabinet Secretary for time being responsible for gender affairs; and

- (g) the Chief Executive Office of the Fund shall be an *ex-officio* member of the Board.

(2) For purposes of paragraph (1)(f), the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to youth affairs shall each nominate two persons of either gender for consideration by the Cabinet Secretary for time being responsible for gender affairs.

(3) The Cabinet Secretary for time being responsible for gender affairs shall appoint the members of the Oversight Board under paragraph (1)(f) by virtue of their knowledge and relevant experience, gender, disability and regional balance.

(4) The members of the Oversight Board referred to in paragraphs (1)(b), (c), (d) and (e) may, in writing, appoint suitable persons to represent them at the meetings of the Oversight Board.

(5) The chairperson and members of the Oversight Board shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

9. (1) A person shall be eligible for appointment as the chairperson of the Oversight Board under paragraph 8(1)(a) if that person—

Qualifications of members of the Oversight Board.

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has knowledge and experience of not less than ten years in a relevant field, including—
 - (i) strategic management;
 - (ii) enterprise development;
 - (iii) finance;
 - (iv) law;
 - (v) accounting;
 - (vi) engineering; or
 - (vii) economics;
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Oversight Board under paragraph 8(1)(f) if that person—

- (a) has knowledge and relevant experience of not less than five years in relevant fields including enterprise development, capital fund management, financial management, gender and development, youth and development, policy formulation; and

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

10. (1) The Oversight Board shall—

Functions of the Oversight Board.

- (a) oversee the administration of the Fund;
- (b) advise the Cabinet Secretary for the time being responsible for gender affairs generally on the operations of the Fund;
- (c) receive reports on the performance of the Fund;
- (d) approve policies to facilitate the attainment of the objects of the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the Fund priorities and criteria for allocation and disbursement of funds to beneficiaries in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) ensure access to the services of the Fund in all parts of the Republic in accordance with Article 6(3) of the Constitution;
- (i) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (j) review and approve the financial statements of the Fund before submission to the Auditor-General;
- (k) review policy on the management of assets, equipment and all properties under the Fund;
- (l) prescribe other guidelines for use by the Fund;
- (m) mobilize resources for the Fund to be paid into the Fund;
- (n) approve investments of any of the funds of the Fund which are not immediately required for its purposes in government securities in accordance with the provisions of the Public Finance Management Act, 2012; and
- (o) undertake any other activity that in the opinion of the Oversight Board, will promote and facilitate realization of the objects and purposes of the Fund.

No. 18 of 2012.

11. (1) There shall be a secretariat of the Fund, headed by a Chief Executive Officer, who shall be responsible for the day-to-day running of the affairs of the Fund.

Secretariat and chief executive officer of the Fund.

(2) The Chief Executive Officer and staff of the secretariat shall be appointed, competitively, by the authorized officer, in consultation with the Public Service Commission.

12. (1) The Administrator of the Fund shall be the Chief Executive Officer appointed under regulation 11 or any other person designated by the Cabinet Secretary, in writing for that purpose.

Administrator of the Fund.

(2) In administering the Fund, the Administrator shall—

- (a) open and operate a bank account with the approval of the Oversight Board and the National Treasury;
- (b) supervise and control the administration of the Fund;
- (c) develop such policies as may be necessary for the attainment of the objects of the Fund and submit them to the Board for approval;
- (d) consult with the Oversight Board on matters relating to the administration of the Fund;
- (e) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (f) enter into and sign agreements with all successful applicants or agents providing affordable and accessible credit to women, youth, persons with disability enterprises and micro, small and medium enterprises;
- (g) open loan accounts of all successful applicants or agents and maintain a record of the amount disbursed and the balance thereof;
- (h) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Public Finance Management Act, 2012 and Public Audit Act, 2015; and
- (i) furnish such additional information as may be considered proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015.

No. 18 of 2012.
No. 18 of 2015.

No. 34 of 2015.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year to which they relate.

13. (1) A woman, youth, person with disability and micro, small and medium enterprise shall be eligible to apply for a loan for business purposes from the Fund if—

Eligibility criteria.

- (a) in the case of a group, is registered with the department of social services, Cooperatives or the Registrar of Societies and is running an enterprise or intends to start an enterprise; and
 - (i) at least seventy percent of the membership is aged between 18 and 35 years; or

- (ii) at least seventy per cent of the membership is composed of women aged eighteen years and above; or
- (iii) at least seventy per cent of the membership is composed of persons with disability aged eighteen years and above.
- (b) in the case of women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act, Partnerships Act, Companies Act, 2015 or Co-operatives Act and he or she is running an enterprise or intends to start an enterprise; Cap. 499.
Cap. 29.
No. 17 of 2015.
Cap. 490.
- (c) in the case of unregistered business, the person shall have a business permit and a Personal Identification Number issued by the Kenya Revenue Authority and he or she is running an enterprise or intends to start an enterprise; or
- (d) in the case of a natural person, the person shall demonstrate that he or she is running an enterprise or intends to start an enterprise.
- (2) The Board may prescribe such additional disbursement conditions as it may consider necessary.
- (3) Women, youth and persons with disability who are running an enterprise or intend to start an enterprise shall be given a preference while processing loans by the Fund.
14. (1) A person who meets the criteria set out in regulation 13 and wishes to borrow a loan from the Fund shall make an application to the Administrator of the Fund in such a manner as may be prescribed by the Oversight Board. Loan application procedure for direct lending by the Fund.
- (2) An application for a loan under paragraph (1) shall be accompanied by—
- (a) in case of a group—
- (i) certificate of registration;
- (ii) minutes of the group's resolution to borrow from the Fund, where applicable; and
- (iii) copies of identification documents of all the group members;
- (b) in the case of an enterprise owned by women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act, Partnerships Act, Companies Act, 2015 or Co-operatives Act— Cap. 499.
Cap. 29 No. 17 of 2015.
Cap. 490.
- (i) certificate of registration;
- (ii) an official search document under the Companies Act, 2015 where applicable; No. 17 of 2015.
- (iii) minutes of the resolution to borrow from the Fund where applicable; and

- (iv) copies of identification documents of all the persons who own the enterprise; or
 - (c) in the case of an unregistered business—
 - (i) copies of personal identification documents; and
 - (ii) business permit.
 - (d) in the case of a person who has demonstrated that he or she is running an enterprise or intends to start an enterprise, a national identification document.
- (3) The Administrator of the Fund shall use the following criteria when evaluating a loan application—
- (a) first in first out principle of loan processing;
 - (b) give preference to women, youth and persons with disability enterprises;
 - (c) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business or projected annual turn-over for start-ups;
 - (d) compliance with the provisions of paragraph (2);
 - (e) ability to repay the loan within the stipulated loan tenor;
 - (f) an undertaking by the beneficiary that the loan shall only be used for the purpose of the business applied for until the loan is repaid in full by the beneficiary;
 - (g) no borrower shall be eligible for more than one loan at a time from the Fund;
 - (h) an undertaking by the applicant to notify the Secretariat of the Fund of any change in physical address; and
 - (i) any other conditions as may be prescribed by the Oversight Board.

15. (1) The loans from the Fund shall be disbursed to a successful applicant subject to the fulfilment of the following condition—

Conditions for loan disbursement.

- (a) all loans from the Fund shall be approved and recorded in the minutes of the Secretariat and a report submitted to the next Oversight Board meeting;
- (b) all loans from the Fund shall be advanced to the successful applicants and shall be disbursed through the bank account of the successful applicant, or any other appropriate account approved by the Oversight Board;
- (c) the Administrator of the Fund shall open and maintain loan accounts of all successful applicants and the amount disbursed in each account and the balance thereof; and
- (d) such other additional conditions as the Oversight Board may impose on a particular successful loan applicant.

(2) The Administrator shall enter into an agreement with the successful applicant setting out the terms of the loan and loan repayment prior to release of funds through signing a prescribed form by the Oversight Board.

16. (1) The interest payable on a loan advanced to the persons referred to in regulation 13 shall be at the rate of six per cent per annum on a monthly reducing balance. Loan interest to applicants.

(2) The interest charged under this regulation shall be paid by the borrower.

17. The Administrator may use a maximum of three percent of the approved budget of the Fund to cover its administrative costs. Administration costs.

18. (1) A loan advanced under these Regulations shall be repaid in full within the prescribed period in the loan agreement. Loan repayment.

(2) A borrower shall have a three-month grace period before the borrower is required to start repaying a loan advanced under these Regulations.

19. (1) The Fund may give a loan to an agent for on-lending to the women, youth, persons with disability and micro, small and medium enterprises. Lending through agents.

(2) A microfinance institution, registered non-governmental organisation involved in financing, savings and credit co-operative organisation, registered group or any other institution approved by the Oversight Board that wishes to be an agent of the Fund under paragraph (1) shall apply for the loan and enter into an agreement with the Administrator in the manner prescribed by the Oversight Board.

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

- (a) a certificate of registration from the relevant regulator;
- (b) a valid license from the relevant regulator;
- (c) an official search document under the Companies Act, 2015, where applicable; No. 17 of 2015
- (d) a valid tax compliance certificate;
- (e) a business permit from the relevant county government;
- (f) the Minutes of a resolution of the Board of the applicant to enter into the partnership with the Fund Board;
- (g) the audited accounts of the applicant for the immediately preceding three years;
- (h) a clean credit reference bureau certificate; and
- (i) any other document as may be prescribed by the Oversight Board.

(4) The Administrator of the Fund shall use the following criteria when evaluating a loan application under paragraph (2)—

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business;
- (c) compliance with the provisions of paragraph 2;
- (d) ability to repay the loan within the stipulated loan tenor;
- (e) ability to on lend to the women, youth, persons with disability and micro, small and medium enterprises;
- (f) an undertaking by the agent that the loan shall only be used for the purpose of on lending to the women, youth, persons with disability and micro, small and medium enterprises;
- (g) no agent shall be eligible for more than one loan at a time from the Fund;
- (h) an undertaking by the agent to provide quarterly reports to the Administrator of the Fund on the beneficiaries of the loan;
- (i) an undertaking by the agent to permit the Administrator to regularly monitor the use of the loan;
- (j) an undertaking by the agent to notify the Secretariat of the Fund of any change in physical address; and
- (k) such other additional conditions as the Oversight Board may impose.

20. (1) Loans advanced under regulation 19 shall be disbursed subject to the fulfilment of the following conditions—

Conditions for loan disbursement.

- (a) the advancement shall be recommended by the Secretariat to the Oversight Board for approval and such approval shall be recorded in the Minutes of the Oversight Board;
- (b) loans disbursed from the Fund shall be to the successful agent and shall be made to the bank account of the successful agent;
- (c) the Administrator of the Fund shall open loan accounts of all successful agent;
- (d) the signing of a loan agreement by the Administrator of the Fund with the successful agent setting out the terms of the loan and loan repayment prior to release of funds upon approval by the Oversight Board; and
- (e) such additional conditions as the Oversight Board may impose on a particular successful agent.

(2) The Administrator of the Fund shall not lend more than twenty per cent of the Fund value through the agents.

(3) The Administrator of the Fund shall not advance more than three percent of the Fund value through an agent.

21. The interest payable on a loan advanced to an agent from the Fund for on lending purposes shall be three percent per annum on a monthly reducing balance. Loan interest to agents.
22. (1) An agent that is entering into an on lending agreement with the Fund may provide matching funding of at least the amount equivalent to the amount advanced by the Fund under regulation 20. Matching funds by agent.
- (2) The Oversight Board may vary the interest payable under regulation 21 to a financial intermediary that provides counterpart funding under paragraph (1) to a minimum of one percent.
23. (1) An agent shall not on-lend to any borrower from the funds received under regulations 18, 19 and 22 an amount exceeding two million five hundred thousand shillings or such other amount specified by the Oversight Board. On lending by agents.
- (2) The interest payable on a loan on-lent by an agent to women, youth, persons with disability enterprises and micro, small and medium enterprises shall be at a maximum rate of ten per cent per annum on a monthly reducing balance.
- (3) An agent shall follow such rules governing insider lending as may be provided in relevant regulatory prudential guidelines on insider lending.
24. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund. Retention of receipts and earnings.
25. A person who misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence. Offences and penalties.
26. In the event of winding up of the Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the national government. Winding up.

Made on the 26 March, 2021.

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

LEGAL NOTICE NO. 56

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (UWEZO FUND)
REGULATIONS, (REVOCATION) REGULATIONS, 2021

1. These Regulations may be cited as the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2021. Citation.

2. The Uwezo Fund established under the Public Finance Management (Uwezo Fund) Regulations, 2014, is wound up. Winding up.
LN 21 of 2014

3. (1) Any amounts remaining in the Uwezo Fund shall be paid into the National Exchequer Account for the credit of the national government. Transfer of
outstanding amounts.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Uwezo Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

4. (1) In this regulation, unless the context otherwise requires— Transition of staff.

“Biashara Kenya Fund” means the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021.

(2) Subject to paragraph (4), a person who, immediately before the commencement of these Regulations, was an employee of the national government serving in the Uwezo Fund shall serve in the Biashara Kenya Fund

(3) Despite paragraph (2), employees of the national government serving in the Uwezo Fund immediately before the commencement of these Regulations shall, upon the commencement of these Regulations, be given an option to serve in the Biashara Kenya Fund and if not appointed be redeployed in the public service.

(4) Before appointing a person to whom paragraph (2) applies, the authorized officer, in consultation with the Public Service Commission, shall—

- (a) require such person to make an application for employment or appointment to the Fund; and
- (b) using the criteria determined by the Public Service Commission, assess such person’s suitability for appropriate placement in the organizational structure of the Biashara Kenya Fund.

(5) A person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Uwezo Fund, who fails to meet the assessment criteria set under paragraph (4)(b), may be deployed in the public service.

(6) Notwithstanding the provisions of this regulation, and for as long as the authorized officer has not appointed staff to serve in the Biashara Kenya Fund, the staff of the Uwezo Fund shall continue to

perform those functions and their acts shall be deemed to be those of the Biashara Kenya Fund

5 The Government Financial Management (Uwezo Fund) Regulations, 2014 are revoked Revocation
LN 21 of 2014

Made on the 26th March, 2021

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning

LEGAL NOTICE NO 57

THE PUBLIC FINANCE MANAGEMENT ACT

(No 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulation—

THE PUBLIC FINANCE MANAGEMENT (WOMEN ENTERPRISE FUND) (REVOCATION) REGULATIONS, 2021

- 1 These Regulations may be cited as the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021 Citation
- 2 The Women Enterprise Fund established under the Government Financial Management (Women Enterprise Fund) Regulations, 2007 is wound up Winding up
LN 147 of 2007
- 3 (1) Any amounts remaining in the Women Enterprise Fund shall be paid into the National Exchequer Account for the credit of the national government Transfer of
outstanding amounts
- (2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account
- (3) Any outstanding loan between the Women Enterprise Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan
- 4 (1) In this Regulation, unless the context otherwise requires— Transition of staff
- “Biashara Kenya Fund” means the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021
- (2) Subject to paragraph (4), a person who, immediately before the commencement of these Regulations, was serving on contract in the Women Enterprise Fund shall, at the commencement of these Regulations, serve in the Biashara Kenya Fund.
- (3) Subject to paragraph (4), every person who, immediately

before the commencement of these Regulations, was an employee of the national government serving in the Women Enterprise Fund shall serve in the Biashara Kenya Fund.

(4) Before appointing a person to whom paragraph (2) or (3) apply, the authorized officer, in consultation with the Public Service Commission, shall—

- (a) require such person to make an application for employment or appointment to the Biashara Kenya Fund; and
- (b) using the criteria determined by the Public Service Commission, assess such person's suitability for appropriate placement in the organizational structure of the Biashara Kenya Fund.

(5) An applicant who was serving on contract under paragraph (2) who fails to meet the assessment criteria set under paragraph (4)(b), shall be allowed to serve in accordance with the terms and conditions of the contract.

(6) A person who, immediately before the commencement of this Regulations, was an employee of the of the Government serving in the Women Enterprise Fund immediately before the commencement of these Regulations who fails to meet the assessment criteria set under paragraph (4), may be deployed in the public service.

(7) Notwithstanding the provisions of this regulation, and for as long as the authorized officer has not appointed staff to serve in the Biashara Kenya Fund, the staff of the Women Enterprise Fund shall continue to perform those functions and their acts shall be deemed to be those of the Biashara Kenya Fund.

5. The Government Financial Management (Women Enterprise Fund) Regulations, 2007 are revoked.

Revocation.
LN 147 of 2007

Made on the 7th April, 2021.

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

LEGAL NOTICE NO. 58

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(8) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE DEVELOPMENT FUND) (REVOCATION) REGULATIONS, 2021

1. These Regulations may be cited as the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021. Citation.

2. The Youth Enterprise Fund established under the Government Financial Management (Youth Enterprise Development Fund) Regulations, 2007 is wound up. Winding up.
LN 167 of 2006

3. (1) Any amounts remaining in the Youth Enterprise Development Fund shall be paid into the National Exchequer Account for the credit of the national government. Transfer of
outstanding amounts.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Youth Enterprise Development Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

4. The Government Financial Management (Youth Enterprise Development Fund) Regulations, 2006 are revoked. Revocation.
LN 167 of 2006

Made on the 7th April, 2021.

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

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2021 AND THE LEGAL NOTICES ON THE REVOCATION

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I. The Purpose of Public Finance Management (Biashara Kenya Fund) Regulations, 2021

- i. The purpose of these Regulations is to provide a one-stop shop for targeted groups looking for business loans from Government, to improve effectiveness and eliminate overlaps. The overarching goal is to enhance economic participation of youth, women, people living with disabilities, and micro, small and medium enterprises in creation of jobs and general economic development. The Fund is envisaged to take advantage of economies of scale, leverage on the existing branch networks and other products that were provided by the targeted Funds for merger, while avoiding duplication of functions and efforts.
- ii. Biashara Kenya Fund's mandate will be to provide affordable financing, business support services, affordable commercial infrastructure, and market linkages to enterprises owned by Youth, Women, persons living with disabilities and micro, small, and medium enterprises.
- iii. The Fund's intervention in supporting SMEs is expected to achieve the following outcomes:
 - a. improved household income of the targeted groups;
 - b. expanded access to affordable credit;
 - c. increased capacity building and skills development;
 - d. formalized and mature MSMEs in retail trade;
 - e. strengthened MSMEs industry;
 - f. improved ICT infrastructure, facilities and services;
 - g. expanded market linkages; and
 - h. increased uptake of Access to Government Procurement Opportunities (AGPO).
- iv. To achieve this purpose, the Regulations in particular:
 - i. specify the sources, expenditure, capital, object and purpose of the Fund;
 - j. provide guidance on the administration and management of the Fund;

- k. establish the Biashara Kenya Fund Oversight Board to oversee the Fund and advise the Cabinet Secretary on the proper and effective performance of the Fund;
- l. provide for the withdrawals from the Fund,
- m. specify the loan eligibility criteria, application procedures, conditions for disbursement, interests and loan repayments
- n. provide for investments of the Fund
- o. provides for retention of receipts and earnings of the Fund
- p. provides for offences and penalties
- q. provide for the winding up of the Fund.

II. The Legislative Context:

- v. The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012. Towards this end, this Fund is proposed for establishment under this section.
- vi. In addition, these Regulations are intended to operationalize Article 27, 55(b)(c) and 56(b)(c) of the Constitution which provides for affirmative action programmes and other resources in respect to disadvantaged groups and youth aimed at ensuring equitable development of the State.
- vii. Towards this end, the following Funds are proposed for merging into Biashara Kenya Fund:
 - a. **Uwezo Fund** established under the legal Notice No 21 of 21st February 2014 pursuant to the Public Finance Management Act (No 18 of 2012);
 - b. **Youth Enterprise Development Fund** established under Legal Notice No. 167 pursuant to the Government Financial Management Act (No. 5 of 2004). The Fund was then transformed into a State Corporation under the Ministry of Public Service, Youth and Gender Affairs in 2007 and hence operates under two legal regimes.
 - c. **Women Enterprise Fund** established under legal Notice No. 147 of 3rd August 2007 pursuant to the government Financial Management Act (No.5 of 2004).
- viii. Therefore, merging of these Funds will require revocation of the:

- a. legal Notice No. 147 under the Government Financial Management Act, 2012;
 - b. Legal Notice No. 167 under the Government Financial Management Act, 2012 and the Executive Order Legal Notice No. 63 of 2007; and
 - c. legal Notice No 21 under the Public Finance Management Act, 2012.
- ix. The National Treasury also complied with the provisions of the Statutory Instruments Act while preparing these Regulations.

III. Policy Background

- x. The policy foundation for creating Biashara Kenya Fund as the Government's principal Fund for developing MSMEs, especially those owned by Youth, Women and Persons Living with Disabilities, is the Vision 2030. Further, there is a critical link between the Fund, the MSMEs and the socio-economic empowerment agenda of the Government that feeds into the four broad areas: increasing manufacturing share of Gross Domestic Product from 9.2 percent to 15 percent through promoting businesses and enterprises; ensuring food security in the country; building one (1) million housing units; and ensuring 100% health coverage over the next five years.
- xi. The Presidential Taskforce on Parastatal Reforms, 2013, recommended the merger of all Funds and initiatives for supporting, financing and developing SMEs, including the Micro and Small Enterprises Authority, Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF) and the Uwezo Fund to form Biashara Kenya Fund. All these Funds have the same objective of developing micro, small and medium scale enterprises, with a greater emphasis to those owned by youth, women and persons living with disabilities. Therefore, the Regulations are intended to operationalize the Presidential Taskforce on Parastatals Reform Report, which was adopted by Government in 2014.
- xii. The critical role that youth, women, persons with disability enterprises and micro, small, and medium enterprises (SME's) play in the nation's economic development and employment creation is well recognized in Kenya's economic blueprint, the Vision 2030, and the Big Four agenda. The socio-economic empowerment of the marginalized groups is also an important agenda of the Government. Over the past ten years, the Government has been supporting expansion of financial access and inclusion of women, youth, people living with disabilities and other groups through affirmative action Funds.

- xiii. While these initiatives have recorded significant socio-economic impact, their fragmented approach to supporting, financing and developing SMEs, have hindered the incubation and take off of enterprises, particularly those owned and managed by youth, women, persons living with disabilities and other minorities. In addition, the segmented approach has resulted into duplication of roles and challenges in governance among the Funds that have resulted to high repayment defaults.
- xiv. Therefore, the Government intends to merge the affirmative action Funds into one Fund (Biashara Kenya Fund) in order to provide a one-stop shop for targeted groups looking for business loans from Government, to improve effectiveness and to eliminate overlaps. The overarching goal is to enhance economic participation of youth, women, people living with disabilities, and micro, small and medium enterprise in creation of jobs and general economic development. The Fund is envisaged to take advantage of economies of scale, leverage on the branch networks and other products that were established by the proposed Funds for merger, while avoiding duplication of functions and efforts.
- xv. The services offered by the UWEZO Fund, Youth Enterprise Development Fund and Women Enterprise Fund will be accessible to the beneficiaries through the Biashara Kenya Fund once they are wound-up. Biashara Kenya Fund will be larger and will prioritize enterprises owned by the youth, women and persons living with disabilities. This is important, especially to the youth who are largely not organized into 'groups' (as is the case for women), as they can access the Fund as sole proprietors.

IV. Public Consultations

- xvi. Extensive consultations were done while preparing the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders' consulted include the National Assembly's Committee on Delegated Legislation, Kenya Women Parliamentary Association (KEWOPA), Mandeleo Ya Wanawake, Federation of Women Lawyers, Boards and Staff of the Funds being merged, National Youth alliance, professional institutions and the general public among others, through the following channels:
 - a. physical meetings with the Hon. Members of Parliament through the National Assembly's Committee on Delegated Legislation and KEWOPA;

- b. members of the general public through a publication vide Kenya Gazette Notice, No. 4468, dated 29th June, 2020;
- c. members of the general public through a public notice on the National Treasury Website, *www.treasury.go.ke* on 22nd June, 2020;
- d. members of the general public through advertisements in newspapers of national wide circulation, the Standard and the People Daily, MyGov pullout, dated 23rd June, 2020 and 30th June, 2020; respectively;
- e. online virtual meetings hosted by the Taskforce with stakeholders including Centre for Women Studies on 21st July, 2020 and the National Youth Council on 30th July, 2020; and
- f. Boards and Staff of the three Funds to be merged, the respective Principal Secretaries (who are the Administrators), and the State Corporations Advisory Council.

xvii. It is important to appreciate that different stakeholders had different views especially on the mode of implementation of the Biashara Kenya Fund, but largely agreed on the need to provide a one stop shop.

V. Guidance

xviii. The Ministry of Public Service and Gender Affairs, the Ministry of Information Communication Technology, Innovations and Youth Affairs and the National Treasury and the Administrator of the Fund will sensitize stakeholders including Parliament, accounting officers of National and County governments and the general public, on the process of accessing the Biashara Kenya Fund, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both Houses of Parliament.

VI. Performance Monitoring and Evaluation of the Biashara Kenya Fund

xix. The Ministry of Public Service & Gender, the Ministry of Information Communication Technology, Innovations and Youth Affairs and National Treasury shall monitor the application of the Biashara Kenya Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, the Fund Secretariat shall be responsible for implementing the Fund and will also carry out regular monitoring and evaluation of the specific programmes, projects and initiatives funded through the Fund.

VII. National Treasury Contact Person.

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



HON. (AMB) UKUR YATANI, EGH
CABINET SECRETARY TO THE NATIONAL TREASURY AND
PLANNING

Date.....12/05/2021.....