



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921

Finance-Nairobi

Fax No.: 310833

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THE NATIONAL TREASURY

P.O. Box 30007

NAIROBI

THE NATIONAL ASSEMBLY
PAPERS LAID

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REF No: TNT/CONF/370/05/A/111

16th April, 2019

Mr. Michael Sialai, CBS

Clerk of the National Assembly
Parliament Building

NAIROBI

RECEIVED
29 APR 2019
CLERK'S OFFICE

Dear Clerk,

RE: THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS, 2019 LEGAL NOTICE NO. 24 AND THE AIR PASSENGER SERVICE CHARGE ACT (APPORTIONMENT) ORDER, 2018 LEGAL NOTICE NO. 23.

The Public Finance Management (Tourism Promotion Fund) Regulations, 2019 Legal Notice No. 24 of 2019 and the Air Passenger Service Charge Act (Apportionment) Order, 2018 Legal Notice No. 23 of 2019 have been published after pre-publication scrutiny by the National Assembly's Committee on Delegated Legislation.

The purpose of this letter, therefore, is to transmit to you the published Public Finance Management (Tourism Promotion Fund) Regulations, 2019 Legal Notice No. 24 of 2019 and the Air Passenger Service Charge Act (Apportionment) Order, 2018 Legal Notice No. 23 of 2019 as well as request you to facilitate the tabling of the Regulations in the House.

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

Yours Sincerely,

DR. HARON SIRIMA
DIRECTOR GENERAL / PUBLIC DEBT MANAGEMENT OFFICE
FOR PRINCIPAL SECRETARY/NATIONAL TREASURY

THE NATIONAL ASSEMBLY
PAPERS LAID

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Handwritten note: @Hassan, take this for registration, no joint request to committee passes 29/4/19



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Copy to: **Mr. Henry Rotich, EGH**
Cabinet Secretary
National Treasury & Planning
NAIROBI

Hon. Najib Balala, EGH
Cabinet Secretary
Ministry of Tourism & Wildlife
NAIROBI

Dr. Kamau Thugge, CBS
Principal Secretary
National Treasury
NAIROBI

Mr. Joe Okudo, CBS
Principal Secretary
State Department for Tourism
Ministry of Tourism and Wildlife
NAIROBI

Mrs. Margaret Mwakima, CBS
Principal Secretary
State Department of Tourism
Ministry of Tourism & Wildlife
NAIROBI

- Explaining Memo



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DIRECTOR GENERAL / PUBLIC DEBT MANAGEMENT OFFICE
FOR PRINCIPAL SECRETARY/NATIONAL TREASURY

① Haron, take this for registration, and to bring one to the relevant committee to pass 29/4/19

Copy to: **Mr. Henry Rotich, EGH**
Cabinet Secretary
National Treasury & Planning
NAIROBI

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Ministry of Tourism and Wildlife
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Principal Secretary
State Department of Tourism
Ministry of Tourism & Wildlife
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- Explaining Memo

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

1. The Purpose of the Order.

The purpose of this Order is to apportion the proceeds of the charge collected under section 3(1) of the Air Passenger Service Charge Act among them:

- (i) Kenya Airports Authority;
- (ii) Kenya Civil Aviation Authority; and
- (iii) Tourism Promotion Fund;

2. The Legislative Context

The National Assembly amended the Air Passenger Service Charge Act in 2016 to provide for additional charge of US\$ 10 for foreign air travels and Kshs. 100/= for domestic air travels per passenger respectively. However, the Regulations were not amended to be in tandem with the amended law. Towards this end, the Tourism Promotion Fund could not receive the additional levy as envisaged when the law was being amended to support rejuvenation of the tourism sector. This Order is intended to address this gap.

3. Policy Background.

The National Assembly delegated duty to make Regulations on Air Passenger Service Charge Act to the Cabinet Secretary. Towards this end, due to the numerous adverse security alerts by foreign Governments, the growth in the tourism sector has declined over time. In 2016, the growth of the tourism sector reached its lowest level and therefore Government made a deliberate effort to rejuvenate the Sector. This required additional resources over and above the normal budgetary allocations.

Accordingly, the National Government decided to levy an additional charge of US \$ 10 for foreign air travels and 100 shillings for domestic air travels per passenger. The total levy collected under this Act, will then be apportioned among three institutions namely, Kenya Airports Authority, Kenya Civil Aviation Authority and Tourism Promotion Fund. These institutions are involved in the growth of both domestic and foreign air passengers. In view of this,

National Tourism Blue Print 2030 and Kenya Tourism Agenda 2018-2022 will guide the use of these proceeds (*both documents attached*).

4. Guidance

The National Treasury will sensitize stakeholders including Parliament, relevant accounting officers of national governments and the general public, on the process of apportioning the proceeds of the charge collected under Section 3 (1) of the Act, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

5. Review of the Apportionment of the proceeds collected under Section 3 (1) of the Act.

The National Treasury shall monitor the application of the resources emanating from this charge. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, each recipient institution of this charge will also carry out regular monitoring and evaluation of the specific projects funded through the proceeds of the Air Passenger Service Charge Act.

6. Public Participation

The Taskforce responsible for preparation and development of the preparing the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 held targeted consultations with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders' consulted were Ministry of Tourism and Wildlife, Chief Executive Officers under the Ministry of Tourism and Wildlife. The institutions under the Ministry of Tourism and Wildlife made both oral and written submissions, which were considered by the Taskforce Charged with the responsibility of developing these Regulations and their inputs taken on board, so far as possible.

It is important to appreciate that consultations were targeted to the institutions, since they are the direct beneficiaries of the Fund. These institutions were invited via a letter and requested to make written submissions on the Regulations (see copy attached of the invitation letter and format for submission of comments).

In addition, it is expected that projects that will benefit from the Fund shall undergo thorough scrutiny through the MTEF budget process as well as involve the general public in determining the specific projects to be funded under this Fund.

Different stakeholders had different views especially on the mode of access to the Tourism Promotion Fund. The National Government therefore made a deliberate choice to finance existing institutions to leverage of existing capacities, ensure prudent use of public resources and accountability of the resources under this Fund. This will give flexibility to the Fund to ensure maximum impact in rejuvenating the tourism sector in Kenya.

BACKGROUND AND EXPLANATORY NOTES FOR THE LEGAL NOTICES

(A) THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS, 2019

1. The Purpose of the Regulations

The purpose of these Regulations is to establish a Tourism Promotion Fund which is designed as a funding model to finance the existing tourism implementing agencies. To achieve this purpose, the Regulations, in particular:

- a) specify the sources of the Fund;
- b) provide guidance on the administration and management of the Fund;
- c) establish the Tourism Promotion Fund Governance structure, which includes the Board to advise the Cabinet Secretary on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- d) set out the funding eligibility criteria to various categories of tourism implementing agencies, procedures for funding and conditions for disbursement from the Fund to eligible institutions;
- e) set out obligations of the recipients of the funds from the Fund; and
- f) give powers to the Board to impose sanctions to tourism implementing agencies in order to promote accountability and prudent use of public resources.

2. The Legislative Context

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.

In addition, these Regulations are intended to operationalize section 3(3) of the Air Passenger Service Charge Act which provides for sharing of the proceeds of the Air Passenger Service Charge among the Kenya Airports Authority, Kenya Civil Aviation Authority and the Tourism Promotion Fund.

The National Treasury also complied with the provisions of the Statutory Instruments Act while preparing these Regulations.

3. Policy Background.

The critical role that Tourism sector play in the nation's socio-economic development, employment creation and contribution to growth of Gross Domestic Product (GDP), is well recognized in Kenya's economic blueprint, the Vision 2030. Towards this end, tourism sector is a major source of foreign exchange and contributed 15% of the Gross Domestic Product (GDP) in 2017 (Kenya Economic Survey, 2018). Further it provides direct and indirect employment opportunities to Kenyans.

Over the recent past, the Government has been supporting reforms for expansion and growth in the tourism sector. While these reforms have recorded significant socio-economic impact in the sector, the sector continues to face various challenges including:-

- a) lack of a comprehensive approach to support the tourism sector;
- b) inadequate support to the targeted tourism sectors; and
- c) lack of a comprehensive approach to support key players in the tourism sector.

The Government therefore proposes the establishment of Tourism Promotion Fund in order to provide complimentary funding to the tourism sector over and above the normal funding from the Exchequer. This will ensure sustainable funding for development, promotion and branding of the tourism sector and continued growth of the sector and the economy at large. This will enhance creation of job opportunities, revenue generation and general economic development in Kenya.

Further, the Regulations are intended to operationalize the Tourism Agenda 2018-2022 policy document which establishes the foundation on which the National Tourism Blueprint 2030 is hinged. Towards this end, the preparation of the Public

Finance Management (Tourism Promotion Fund) Regulations, 2018 benefitted from consultations from all stakeholders in the tourism sector which culminated in the development of the National Tourism Blue Print 2030 released in September, 2017. Accordingly, any tourism implementing agency and its stakeholders participated in the development and finalization of the National Tourism Blue Print 2030 (*see copy attached*).

The establishment of the Fund, therefore, will achieve the following outcomes:-

- (i) Enhanced international tourist arrivals;
- (ii) Enhanced tourism earnings realized from continued recovery and sustained growth of the sector;
- (iii) Expansion of direct and indirect employment opportunities;
- (iv) Expansion of agriculture to support the hotel industry especially agro-processing , horticulture and auxiliary services to the hotel industry;
- (v) Sustained conservation of national parks, reserves, museums, heritage sites and other tourist attraction sites;
- (vi) Sustained infrastructure development to support the tourism sector especially road, ports, water and energy sectors;
- (vii) Growth of the manufacturing and housing sectors due to increased international tourism arrivals leading to increased demand for manufactured goods as well as accommodation facilities;
- (viii) Diversification of tourism products, services and tourist source markets;
- (ix) Enhanced Kenya's global competitiveness as a preferred long-haul tourist destination; and
- (x) Promote diversity and cohesion through sustained growth in the tourism sector.

The Government therefore intends that Tourism Promotion Fund be established to support development, promotion and branding of the tourism sector to increase earnings from the sector, create employment and stimulate economic growth in the country.

Finally, in order to ensure that there is no duplication among the tourism agencies, this Fund was designed as a funding model, whereby tourism implementing agencies shall apply for funding for projects that support development, promotion and

branding of tourism sector. Therefore all existing tourism agencies can access the funds, based on priority areas of Government.

4. Guidance

The National Treasury will sensitize stakeholders including Parliament, Accounting Officers of National and County Governments and the general public, on the process of accessing the Tourism Promotion Fund resources, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

5. Review of the performance of the Tourism Promotion Fund.

The National Treasury shall monitor the application of the Tourism Promotion Fund resources. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, the Fund Secretariat will also carry out regular monitoring and evaluation of the specific projects funded through the Tourism Promotion Fund.

6. Public Participation

The Taskforce responsible for preparation and development of the preparing the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 held targeted consultations with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders' consulted were Ministry of Tourism and Wildlife, Chief Executive Officers under the Ministry of Tourism and Wildlife. The institutions under the Ministry of Tourism and Wildlife made both oral and written submissions, which were considered by the Taskforce Charged with the responsibility of developing these Regulations and their inputs taken on board, so far as possible.

It is important to appreciate that consultations were targeted to the institutions, since they are the direct beneficiaries of the Fund. These institutions were invited via a letter and requested to make written submissions on the Regulations (*see copy attached of the invitation letter and format for submission of comments*).

In addition, it is expected that projects that will benefit from the Fund shall undergo thorough scrutiny through the MTEF budget process as well as involve the general public in determining the specific projects to be funded under this Fund.

Different stakeholders had different views especially on the mode of access to the Tourism Promotion Fund. The National Government therefore made a deliberate choice to finance existing institutions to leverage of existing capacities, avoid duplication and overlaps, ensure prudent use of public resources and accountability of the resources under this Fund. This will give flexibility to the Fund to ensure maximum impact in rejuvenating the tourism sector in Kenya.

SPECIAL ISSUE

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Kenya Gazette Supplement No. 47

12th April, 2019

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 22

THE INCOME TAX ACT

(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Planning directs that the severance pay, three months' salary in lieu of notice and payment of accumulated leave days paid to the nine employees of Kenya Airways Limited who left service between February 2018 and December 2018 under the early retirement programme shall be exempt from the provisions of the Act:

Provided that—

- (a) this exemption shall not apply to any other pension benefits paid to the employees;
- (b) the employees who left service under the early retirement programme shall not be re-employed by Kenya Airways Limited in any capacity or on any term whatsoever before the expiry of five years from the date of leaving service;
- (c) Kenya Airways Limited shall comply with any conditions imposed on it by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of every employee leaving service under the early retirement programme, the date the employee left service, the amount paid to the employee and a copy of the letter to the employee confirming that the employee has left service under the early retirement programme.

Dated the 19th March, 2019.

HENRY ROTICH,

Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 23

THE AIR PASSENGER SERVICE CHARGE ACT

(Cap. 475)

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

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

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

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

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

Dated the 19th March, 2019.

HENRY ROTICH,
*Cabinet Secretary for
The National Treasury and Planning.*

LEGAL NOTICE NO. 24

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—

2. THE PUBLIC FINANCE MANAGEMENT (TOURISM
PROMOTION FUND) REGULATIONS, 2019

- 1. These Regulations may be cited as the Public Finance Management (Tourism Promotion Fund) Regulations, 2019. Citation.
- 2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “Administrator of the Fund” means the Chief Executive Officer designated as such under regulation 20 of these Regulations;
 - “Board” means the Oversight Board established under regulation 16;
 - “Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;
 - “Fund” means the Tourism Promotion Fund established under regulation 3 of these Regulations;

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

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

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

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

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

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

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

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

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

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

- (a) financing development, promotion and branding programmes and initiatives in relation to tourism products including tourism niche products and tourism events;
- (b) financing marketing, promotion and branding of Kenya in specific local, regional and international market segments;
- (c) financing tourism data capture, analysis and dissemination of the same and any other related research which may include deployment of technology based applications;
- (d) financing development of tourism facilities and establishments in areas where the private sector is unable or unwilling to develop, but with a high potential for tourism promotion and branding;
- (e) co-financing of tourism development and promotion projects with the county governments on the basis of an agreed ratio of matching grants;

- (f) funding programmes and initiatives for tourism safety and security geared towards development, promotion and branding of tourism sector;
- (g) financing development of innovations and inventions which promote tourism development, promotion and branding;
- (h) funding of plugging projects which contribute to development, promotion and branding of tourism sector;
- (i) financing programmes and initiatives geared towards tourism intelligence and information gathering for purposes of developing, promoting and branding tourism in Kenya; and
- (j) standards development and capacity building in the tourism sector.

6. The Fund shall consist of—

Sources of funds.

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

Cap. 475.

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

Payment out of the Fund.

(2) The expenditure incurred out of the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund and approved by the Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.

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

Retention of funds.

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

Funding eligibility criteria.

- (a) in the case of a state corporation or a government agency—
 - (i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium term plan approved by the governing body of the state corporation or agency;

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

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

Procedure for funding.

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

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

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

- (a) in case of a state corporation or government agency—
 - (i) the minutes of a properly constituted meeting of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund;
 - (ii) an annual work programme aligned to the strategic plan of the state corporation or government agency approved by the governing body of that corporation or agency and the Medium Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency;

- (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) a statutory declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.
- (c) in the case of a Ministry or State Department—
- (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan;
 - (ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity;
 - (iii) where it is an infrastructure development project, the project designs, plans and bills of quantities approved by the accounting officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) an accounting officers' declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.
- (3) A maximum of ten per centum (10%) of the approved budget for each financial year shall be allocated annually by the Board, with the approval of the Cabinet Secretary for the time being responsible for matters relating to tourism based on the Medium Term Plan of that Ministry and the Cabinet Secretary for the National Treasury, to implement strategic interventions, programmes and initiatives through a tourism implementing agency.

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

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

Conditions for disbursements of funds.

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

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

- (a) relate to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and
- (b) have been approved by the Administrator of the Fund and submitted to the Board for approval.

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

12. (1) A recipient of the funds shall—

Obligations of the recipient of funds.

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

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

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

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

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

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

Request for payment from the Fund.

- (a) the project to be financed is procured in accordance with the Public Procurement and Asset Disposal Act, 2015;
- (b) the project to be financed is included in the approved estimates of revenue and expenditure for the tourism implementing agency; and
- (c) the requirements of regulation 11 are met.

No. 33 of 2015.

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

Establishment and composition of the Board.

- (a) the Cabinet Secretary responsible for matters relating to

tourism, who shall be the chairperson of the Board, or in his or her absence, the Principal Secretary responsible for matters relating to tourism;

- (b) the Principal Secretary responsible for matters relating to tourism;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Principal Secretary responsible for matters relating to Transport;
- (e) the Principal Secretary responsible for matters relating to Culture;
- (f) the Principal Secretary responsible for matters relating to wildlife;
- (g) the Principal Secretary responsible for matters relating to Internal Security;
- (h) two persons of opposite gender appointed by the Cabinet Secretary responsible for matters relating to tourism in accordance with Article 27 of the Constitution.

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

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

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

15. The functions of the Board shall be —

Functions of the Board.

- (a) to advise the Cabinet Secretary on the funding requirements of the Fund;
- (b) to review and adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for matters relating to tourism for concurrence and onward transmission to the Cabinet Secretary for approval;
- (c) to determine the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (d) to ensure that the annual estimates of revenue and expenditure for the Fund include retention funds for the preceding financial year which shall be revoted;
- (e) to ensure that only projects included in the tourism implementing agency annual programme are promoted for

funding under these Regulations;

- (f) to advise the Cabinet Secretary on amounts and timing for the fund transfers into the Fund;
- (g) to approve and review the investment of surplus funds from the Fund;
- (h) to advise the Cabinet Secretary on any additional sources of funds for the Fund;
- (i) to approve the financial statements prepared by the Administrator of the Fund before submission to the Auditor-General; and
- (j) to approve the non-financial reports of the Fund before submitting them to the Cabinet Secretary responsible for tourism for onward transmission to the National Treasury.

16. The Administrator of the Fund may withhold payments due and owing to a tourism implementing agency where—

Withholding of payments.

- (a) that tourism implementing agency fails to comply with the provisions of regulation 12;
- (b) the Administrator of the Fund is of the opinion that the provisions of these Regulations have not been complied with; or
- (c) a tourism implementing agency provides information justifying the proposed withholding with approval of the agency governing body; and
- (d) the Board approves the withholding.

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

Imposition of sanctions.

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

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

Applications for payments out of the fund.

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

- (a) the name and address of the payee (tourism implementing agency);

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

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

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

Appointment of chief executive officer.

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

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

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

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

20. (1) The chief executive officer appointed under regulation 19 shall be the Administrator of the Fund.

Administrator of the Fund.

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

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

administration of the Fund;

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

21. The Administrator of the Fund shall have power to—

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

Powers of
Administrator of the
Fund.

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

Secretariat support for
Administrator of the
Fund.

Officer.

(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to tourism may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations.

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

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

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

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

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

24. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn. Overdrawn accounts.

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

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

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

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

27. The Fund shall be governed by all relevant financial and Financial and procurement Regulations.

procurement laws and regulations as applicable.

28. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

Review of performance of the Fund.

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

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

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

Annual estimates.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) moneys allocated to tourism implementing agencies under these Regulations;
- (c) monies for the administration expenses of the Fund;
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Board, where applicable;
- (e) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
- (f) the proper maintenance of the assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and thereafter, the Board shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

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

Quarterly reports.

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

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

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The financial statements prepared under paragraph (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.

No. 34 of 2015.

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

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

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

Administration expenses.

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

33. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

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

Winding-up of the Fund.

(2) On winding up of the Fund —

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

(3) Within three months upon the decision to wind up the Fund, the administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Board for approval.

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

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

Made on the 12th March, 2019.

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

LEGAL NOTICE NO. 25

THE LABOUR INSTITUTIONS ACT, 2007

(No. 12 of 2007)

THE LABOUR INSTITUTIONS (PRIVATE EMPLOYMENT
AGENCIES) (AMENDMENT) REGULATIONS, 2019

IN EXERCISE of the powers conferred by section 60 (1) of the Labour Institutions Act, 2007, the Cabinet Secretary for Labour and Social Protection makes the following Regulations—

THE LABOUR INSTITUTIONS (PRIVATE EMPLOYMENT
AGENCIES) (AMENDMENT) REGULATIONS, 2019

1. These Regulations may be cited as the Labour Institutions (Private Employment Agencies) (Amendment) Regulations, 2019. Citation.

2. Regulation 3 of the Labour Institutions (Private Employment Agencies) Regulations, 2016, hereinafter referred to as the “principal Regulations”— Amendment of regulation 3 of L.N. No. 110 of 2016.

(a) is amended in paragraph (b) by deleting the words “the directors have” and substituting therefor the words “at least one of the directors has”; and

(b) is amended in paragraph (c) by deleting the words “degree in a business related field from a university recognised” and substituting therefor the words “diploma in a business-related field from a college recognised”.

3. Regulation 5 of the principal Regulations is amended in subregulation (3) by deleting the words “anniversary date of issuance” and substituting therefor the expression “30th June in each year”. Amendment of regulation 5 of L.N. No. 110 of 2007.

