

LEGAL NOTICE.....

THE PUBLIC FINANCE MANAGEMENT ACT, 2012
(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (EQUALISATION FUND) REGULATIONS,
2020

Arrangement of Regulations

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SCHEDULE

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

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—

PART I—PRELIMINARY	
Citation.	1. These Regulations may be cited as the Public Finance Management (Equalization Fund) Regulations, 2019.
Interpretation. No. 18 of 2012	2. In these Regulations, unless the context otherwise requires— “Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; “Board” means the Equalization Fund Board established under sub-regulation 4.1; “Cabinet Secretary” has the meaning assigned to it under section 2 of the Public Finance Management Act; “financial year” has the meaning assigned to it under section 2 of the Public Finance Management Act; “Fund” means the Equalization Fund established under Article 204 of the Constitution; “marginalized area” means an area identified under policy determined by the Commission on Revenue Allocation in accordance with Article 216 (4) of the Constitution;
No.16 of 2011.	“revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act; and “unutilized balance” means – (a) any amounts not withdrawn from the Fund at the end of financial year; (b) any amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year; (c) amount earmarked for the first policy with 14 Counties Ongoing projects); or (d) amount earmarked for the second policy with 34 Counties (New projects to be identified).
PART II— STATEMENT POLICY	
Purpose.	3. The purpose of these Regulations is to: (a) specify the sources, object and purpose of the Fund; (b) provide guidance on the administration and management of the Fund;

	<ul style="list-style-type: none"> (c) establish the Board to advise the Cabinet Secretary on the proper and effective performance of the Fund; (d) provide for the withdrawals from the Fund; (e) provide for completion of ongoing projects under the first policy; (f) provide for implementation of new projects under the second policy; (g) provide for extension of Fund period; and (h) provide for winding up of the Fund.
Capital of the Fund.	4. The capital of the Fund shall be one half percent of all the revenue collected by the national government as appropriated by Parliament in each financial year.

PART III— SOURCES, OBJECTS AND PURPOSE

Sources of the Fund.	<p>5. The Fund shall consist of—</p> <ul style="list-style-type: none"> (a) One half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly; (b) income generated from proceeds of the Fund; and (c) the cumulative amount of revenue from previous years not spent.
Object and purpose of the Fund.	6. The object and purpose of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.

PART IV — MANAGEMENT OF THE FUND

Establishment of the Board.	<p>7. There is established Equalization Fund Board which shall be a body corporate capable of suing and being sued in its own name. The Board shall comprise the following members:</p> <ul style="list-style-type: none"> (a) The chairperson who shall be appointed by the Cabinet Secretary; (b) The Principal Secretary or his alternate responsible for Devolution matters; (c) One person nominated by the Parliamentary Pastoralist Group; (d) One person nominated by the Senate; (e) Two persons nominated by the Council of Governors drawn from the Arid and Semi-Arid Areas (ASALs);
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	<p>(f) Two persons nominated from organizations working in equalization fund beneficiary Counties, appointed by the Cabinet Secretary; and</p> <p>(g) Chief Executive officer/ Secretary to the Board appointed competitively.</p>
Qualification requirement of members	<p>8. A person is qualified for appointment under Regulation 7 if that person-</p> <p>(a) is a citizen of Kenya;</p> <p>(b) holds a degree from a university recognized in Kenya;</p> <p>(c) has at least five years' professional experience in the respective field;</p> <p>(d) and meets the requirements of Chapter Six of the Constitution</p>
Functions of The Board.	<p>9. The functions of the Board with regards to this Fund shall be to</p> <p>(a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation;</p> <p>(b) appraise and evaluate projects proposed under the work plans submitted by Counties to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;</p> <p>(c) make recommendations on the priority areas requiring financing and implementation in accordance with the work plans considered under paragraph (b) and in line with the recommendations of the Commission on Revenue Allocation;</p> <p>(d) oversee, in consultation with the county governments, the implementation of the projects to ensure compliance with the Constitution;</p> <p>(e) monitor and evaluate the projects implemented by County Governments to determine their impact in addressing the factors contributing to the marginalization of the areas identified in the counties;</p> <p>(f) put in place measures for transparency and accountability in the implementation of projects by county governments;</p> <p>(g) establish a framework for collaboration between the National Government and County Governments in the implementation of projects in line with the Constitution,</p>

	<p>the recommendations of the Commission on Revenue Allocation and these Guidelines;</p> <p>(h) review the consolidated quarterly reports prepared by the secretary on the implementation of the projects and make recommendations to the Cabinet Secretary on performance improvement;</p> <p>(i) review the annual estimates of expenditure of the Fund for approval by the Cabinet Secretary; and</p> <p>(j) undertake project public participation in line with Article 201 of the Constitution.</p>
Establishment of committees.	<p>10. (1) The Board may establish such committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.</p> <p>(2) The Board may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.</p>
Expenses of the Board.	<p>11. (1) There shall be paid out of the Fund, expenses of the Board and such other expenses incurred pursuant to the object and purpose for which the Fund is established.</p> <p>(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and budget estimates prepared by the secretary approved by the Board at the beginning of the financial year to which they relate.</p> <p>(3) Board expenses shall not be more than 3 percent of annual approved equalization fund allocation</p>
Conduct of business, etc.	<p>12. The business and affairs of the Board shall be conducted in accordance with the Schedule but, subject to the Schedule, the Board may regulate its own procedures.</p>
Establishment of County Technical Committee	<p>13. Each eligible county shall establish an all-inclusive committee to be known as County Technical Committee comprising-</p> <p>(a) a chairperson who shall be the County Commissioner;</p> <p>(b) County Executive Committee Member for Finance;</p> <p>(c) Constituency Development Fund managers;</p> <p>(d) Representative of County Assembly; and</p> <p>(e) Representatives of implementing sectors.</p>
Functions of the County Technical Committee	<p>14. The County Technical Committee shall be responsible for approving all projects to be financed from the Fund.</p>

<p>Establishment of Sub-County Technical Committee</p>	<p>15. Each eligible county shall establish a committee at the sub-county level to be known as Sub-County Technical Committee comprising-</p> <ul style="list-style-type: none"> (a) a chairperson who shall be the sub-county Commissioner; (b) a maximum of four technical officers from ministries relevant to funding priorities; and (c) the chairpersons of Project Identification and Implementation Committees within the sub-county.
<p>Functions of the Sub-County Technical Committee</p>	<p>16. The functions of the Sub-County Technical Committee shall be to-</p> <ul style="list-style-type: none"> (a) receive project/funding proposals from respective Project Identification and Implementation committees; (b) evaluate and approve all development proposals from the Project Identification and Implementation Committees; (c) assess the feasibility and cost all project proposals received from the Project Identification and Implementation Committees; (d) submit project proposals and funding requests received from the Project Identification and Implementation Committees to the county government; (e) monitor all projects being undertaken and ensure they meet the objectives they are originally meant to achieve; (f) prepare quarterly reports on Funds received and Implementation status of all projects financed by the Fund with a copy to the copy to the County Executive Committee Member responsible for matters relating to finance; (g) prepare annual report on implementation on all projects financed by the Fund with a copy to the copy to the County Executive Committee Member for Finance;
<p>Establishment of Project Identification and Implementation Committee.</p>	<p>17. Each eligible county shall establish a committee at the ward level to be known as Project Identification and Implementation Committee comprising-</p> <ul style="list-style-type: none"> (a) a chairperson who shall be the Assistant Sub-County Commissioner; (b) the village administrators of areas defined by the Commission on Revenue Allocation as marginalized; and

	(c) a representative of the women, youth, minorities and persons with disabilities.
functions of Project Identification and Implementation Committee.	<p>18. The functions of the Project Identification and Implementation Committee shall be to –</p> <ul style="list-style-type: none"> (a) undertake public participation, in beneficiary areas; (b) identify and prioritize project in beneficiary areas in line with guidelines issued by the Fund Administrator; (c) prepare and submit project/funding proposals to Sub-County Technical Committee; and (d) provide oversight on project implementation.
functions of the County Executive Committee Member for Finance.	<p>19. The functions of the County Executive Committee Member responsible for matters relating to finance with respect to the Fund in each eligible county shall be to –</p> <ul style="list-style-type: none"> (a) consolidate all projects approved by the County Technical Committee and submit to the Secretary of the Board for funding; (b) prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board in line with the Public Finance Management Act and submit to the Secretary of the Board; (c) prepare quarterly financial statements for the fund in a form prescribed by the Accounting Standards Board and submit to the Secretary of the Board; (d) prepare quarterly reports on Funds received and Implementation status of all projects financed by the Fund with a copy to the Secretary of the Board and Commission on Revenue Allocation; and (e) prepare annual report on implementation on all projects financed by Fund with a copy to the Secretary, Commission on Revenue Allocation and Parliament.
secretariat.	20. The Secretary to the Board will have adequate staff to run the Board.
functions of the Secretariat.	<p>21. The functions of the Secretariat shall be to—</p> <ul style="list-style-type: none"> (a) provide technical and administrative services to the Board; (b) implement the decisions, strategies and work plan of the Board;

	<ul style="list-style-type: none"> (c) make recommendations to the Board on the formulation and implementation of programmes for the achievement of the functions of the Board; (d) review and consolidate the work-plans received from Counties for consideration by the Board; (e) identify any challenges in the implementation of projects and make recommendations to the Board on the remedial measures required to be undertaken; (f) maintain a data base setting out information on <ul style="list-style-type: none"> (i) projects, operations and programmes undertaken with respect to each county which has been identified by the Commission on Revenue Allocation as being marginalized; (ii) monies appropriated from the Fund with respect to each project or programme; and (iii) status of each project or programme undertake; (g) prepare and ensure timely submission of reports to the Board and the Cabinet Secretary regarding the implementation of projects and programmes under the Fund; (h) make arrangements for periodical monitoring, evaluation and reporting of the criteria, standards and programmes in relation to the objects and functions of the Advisory Board; and (i) perform such other functions as may be assigned to it by the Board.
PART V—PREPARATION AND SUBMISSION OF WORKPLANS	
Approval of workplan.	<p>22. (1) The County Executive Committee Member responsible for matters relating to finance shall submit to the respective County Assembly the work plan prepared at the county level for the financial year together with an explanatory memorandum which shall include an explanation of any deviation between the work plan and recommendations made by the Board or the relevant Ministry or State Department for consideration.</p> <p>(2) The County Assembly shall approve the work plan within seven days.</p> <p>(3) Where the County Assembly fails to approve or reject the work plan submitted under sub-regulation (1), within seven days, the work plan shall be deemed to be approved.</p>
Preparation of workplans.	<p>23. (1) The fund shall be utilized as conditional grants to the affected counties in line with the Division of Revenue Act and</p>

the County Allocation Revenue Act for the respective financial year.

(2) The County Executive Committee Member responsible for matters relating to finance in each of the counties identified by the Commission on Revenue Allocation shall prepare a work plan setting out -

- (a) a schedule of projects and programmes proposed to be undertaken by the county government in the areas identified by Commission on Revenue Allocation;
- (b) a technical assessment of the viability of the schedule of projects and programmes;
- (c) public participation undertaken during the process of identification of programmes and projects;
- (d) an assessment of the manner in which the programmes or projects would be expected to address the shortcomings identified by the Commission on Revenue Allocation in the provision of the identified basic needs;
- (e) an assessment of how the programmes and projects identified impact on the County Integrated Development Plan; and
- (f) the approximate cost of the works to be undertaken in relation to a project or programme identified in the work plan.

(3) In identifying programs and projects for inclusion in the work plan, the County Executive Committee Member responsible for matters relating to finance shall

(a) take into account-

- (i) the criteria recommended by CRA
 - (ii) the costing of the project and the time required for the implementation of the project on a priority basis;
 - (iii) recommendations by the Commission on Revenue Allocation;
 - (iv) recommendations, standards and guidelines issued by the Board;
 - (v) the interventions required to be undertaken on a priority basis in order to address the needs identified by the Commission on Revenue Allocation for the provision of identified basic services; and
 - (vi) the recommendations of the respective Ministry or State Department at the Counties; and
- (b) collaborate with the Board and the relevant Ministry or State Department.

	<p>(4) The County Executive Committee Member responsible for matters relating to finance shall ensure that a work plan prepared under sub-regulation (1) of this Regulation is aligned to the annual development plan of the county prepared under the Public Finance Management Act.</p> <p>(5) The Board, relevant Ministry or State Department shall make its recommendations to the county executive committee member for matters relating to finance on the proposed work plan within fourteen days of the receipt of a request under sub-regulation 3 (b) of this Regulation.</p>
Criteria for identification of projects.	<p>(24) (1) In determining and identifying projects or programmes for the provision of basic services and financing under the Fund, the County Executive Committee Member responsible for matters relating to finance shall take into account the input of the Board and the committees established under Part IV of these Regulations.</p>
Submission of work plan to the Board.	<p>25 (1) The County Executive Committee Member responsible for matters relating to finance shall, upon approval of a work plan, submit the work plan to the Board.</p> <p>(2) Upon receipt of the work plan, the Board shall –</p> <ul style="list-style-type: none"> (a) appraise the work plan to ensure compliance with these Regulations and that it adequately addresses the needs identified by the Commission on Revenue Allocation; (b) identify the programmes or projects that require to be implemented on a priority basis; and make its recommendations to the Cabinet Secretary
Quarterly reports on projects and disbursements.	<p>26. The Board shall, on a quarterly basis, submit a report to the Cabinet Secretary detailing—</p> <ul style="list-style-type: none"> (a) a summary of the project and programmes approved for financing in the preceding year indicating the funding status of such projects, if any; (b) a summary of the status of disbursements of funds to the various projects and implementation progress; (c) a summary of the status of disbursements from the Fund to the respective county governments or any agency involved in implementation of any projects financed from the Fund; and (d) any restriction imposed on a county government or any agency involved in the implementation of the projects or programmes by the county government.

<p>report by the County Executive Committee Member for finance.</p>	<p>27. (1) The County Executive Committee Member responsible for matters relating to finance shall-</p> <ul style="list-style-type: none"> (a) prepare and submit to the Board quarterly reports on the implementation of the projects or programs under the work plan in the format prescribed by the Advisory Board; and (b) ensure that any projects undertaken under the work plan are carried out in accordance with the Public Procurement and Asset Disposal Act and any other law. <p>(2) A report prepared under sub-regulation (1) shall be submitted to the Secretary and shall include-</p> <ul style="list-style-type: none"> (a) information relating to the procurement of services and works in relation to the projects and programmes under the work plan; (b) a schedule of the works required to be undertaken and status of the implementation of projects and programmes; (c) the timelines for completion of specific phases of projects and programmes; (d) the manner in which the funds received from the Fund have been utilized in relation to any project or programme; (e) the monies disbursed and any balance of unspent funds; and such other information as the Board may require. <p>(3) The Secretary to the Board shall consolidate the reports submitted for consideration by the Board.</p>
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PART VI - WITHDRAWALS FROM THE FUND

<p>Withdrawals from the Fund.</p>	<p>28. (1) Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the Secretary through the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.</p> <p>(2) The authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund account in accordance with the authorization and instructions given.</p> <p>(3) All withdrawals made from the Fund under sub-regulation (1) of this Regulation shall be deposited into the respective spending counties account.</p>
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PART VII – WINDING UP OF THE FUND	
Winding up of the Fund.	<p>29. (1) At least eighteen months before the expiry of the term specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution—</p> <p>(a) the Board shall prepare a status report on all existing pending projects and their funding requirements in line with the submitted work plans; and</p> <p>(b) the Cabinet Secretary shall –</p> <p style="padding-left: 40px;">(i) make the necessary requisition for the transfer of monies to the county governments for the completion of the projects; and</p> <p style="padding-left: 40px;">(ii) shall ensure that monies required for the completion of the projects has been transferred to the respective county governments.</p> <p>(2) At least twelve months before the expiry of the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution the county executive committee members in the respective county governments shall submit to the Advisory Board —</p> <p style="padding-left: 40px;">(a) a schedule of the programmes and projects implemented pursuant to Article 204 of the Constitution and the expected completion date;</p> <p style="padding-left: 40px;">(b) an assessment report of the impact of the programmes and projects that have been implemented pursuant to Article 204 of the Constitution;</p> <p style="padding-left: 40px;">(c) a financial report on the projects and programmes; and</p> <p style="padding-left: 40px;">(d) terminal Monitoring and evaluation report.</p> <p>(4) The Board shall prepare the final winding up report of the Fund not later than three months from the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution for approval by the Cabinet Secretary.</p> <p>(5) The Cabinet Secretary shall, submit the final report to the National Assembly and the Senate within fourteen days of the receipt of the initial report under sub-regulation (3) of this Regulation.</p>

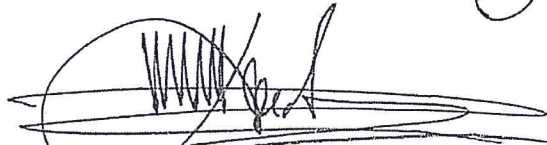
SCHEDULE

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

tenure of office.	1. Members of the Board appointed under these regulations shall, subject to the provisions of this Schedule, hold office for a term of three years/ Six years nonrenewable, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for a further term of three years.
vacation of office.	2. A member of the Board, other than ex-officio member, may- (a) at any time resign from office by notice in writing to the Cabinet Secretary/ Counties; (b) be removed from office by the Cabinet Secretary/ Counties, if the member- (c)has been absent from three consecutive meetings of the Board without permission from the chairperson; (i) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; (ii) is convicted of an offense involving dishonesty or fraud; (iii)is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; (iv)is incapacitated by prolonged physical or mental illness; or (v) is otherwise unable or unfit to discharge his functions.
meetings of the Board.	3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the dates of the next meeting. (2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board. (3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, of whom the majority of shall be from amongst non ex officio members. (4) The chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

	<p>(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by consensus.</p> <p>(6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.</p> <p>(7) Subject to the provisions of this schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.</p>
Disclosure of interest.	<p>4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:</p> <p>Provided that if the majority of the members present are of the opinion that the experience or expertise of the member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.</p> <p>(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.</p>
Minutes.	<p>5. The Board Secretary shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.</p>

Made on the 14th July, 2020.



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

