

LEGAL NOTICE NO.

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
ACT
(Cap. 59B)**

IN EXERCISE of the powers conferred by section 113 of the Proceeds of Crime and Anti-Money Laundering Act, the Cabinet Secretary for the National Treasury makes the following Regulations –

**THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING (CRIMINAL ASSETS RECOVERY FUND)
(ADMINISTRATION) REGULATIONS, 2019**

Citation. **1.** These Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) (Administration) Regulations, 2019.

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

“Act” means the Proceeds of Crime and Anti-Money Laundering Act;

No. 18 of 2012. “accounting officer” has the same meaning as provided for in the Public Financial Management Act, 2012;

“Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Financial Management Act, 2012;

“administrator of the Fund” means a person designated as such under regulation 12 to these Regulations;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“ Committee” means the Criminal Assets Recovery Fund Committee established under regulation 4;

“Fund” means the Criminal Assets Recovery Fund established under section 109 of the Act.

Objects and purpose of the Fund.

3. (1) The objects and purpose for which the Fund is established are to-

- (a) receive all money derived from the fulfillment of confiscation and forfeiture under the Act to ensure public and common good;
- (b) receive, manage and transfer all property derived from the fulfillment of a confiscation and forfeiture order stipulated in Parts VII to X of the Act;
- (c) receive money or property recovered under the Anti- Corruption and Economic Crimes Act, 2003; and
- (c) build capacities for law enforcement and criminal justice in Kenya.

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

Establishment of the Recovery Fund Committee.

4. (1) There is established a Committee to be known as the Criminal Assets Recovery Fund Committee (hereinafter referred to as the “Committee”).

(2) The Committee shall consist of members comprising the following the-

- (a) Attorney General;
- (b) Principal Secretary of the National Treasury;
- (c) Director General of the National Intelligence Service;
- (d) Governor of the Central Bank;
- (e) Director General of the Financial Reporting Centre;
- (f) Chief Executive Officer, Ethics and Anti-Corruption Commission;
- (g) Commissioner General of the Kenya Revenue Authority;

- (h) Director of Public Prosecutions;
 - (i) Director of Criminal Investigations; and
 - (j) administrator of the Fund, who shall be its secretary and an *ex officio* member of the Committee.
- (3) The Principal Secretary, National Treasury shall be the chairperson of the Committee.
- (4) In the absence of the chairperson in any meeting of the Committee, the members present shall elect one of their own to chair the meeting.
- (5) The members appointed under sub regulation (2) (a) to (i) may attend in person or through a designated representative.
- (6) The Committee may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its oversight functions over the Fund.
- (7) The quorum for the conduct of meetings of the Committee shall be five members.
- (8) The Committee shall otherwise regulate its own procedure.

Functions of the
Committee in
relation to the Fund.

5. The Committee shall-

- (a) provide overall management, design and oversight of the Fund;
- (b) receive reports on the performance of the Fund;
- (c) develop relevant guidelines and review them as the need arises, to guide the operations and implementation of the Fund;
- (d) provide the manner for the utilization of properties and monies standing to the credit of the Fund;
- (e) oversee the management and administration of the Fund including recoveries from properties confiscated or forfeited to the Committee under the Act;
- (f) approve the financial statements of the Fund before submission to the Auditor General; and
- (g) approve policy on the management of assets, equipment and all properties of the Fund.

The role of the Committee.

6. The Committee shall facilitate and oversee the operations and implementation of the Fund and in particular shall-

- (a) develop policy measures relating to the Fund;
- (b) supervise and control the administration of the Fund;
- (c) approve the opening and closing of bank accounts;
- (d) approve guidelines on the compensation of third party claims pursuant to a court order;
- (e) develop and facilitate sectoral linkages on the Fund;
- (f) review the performance of the Fund and make recommendations to improve on the operations of the Fund to the administrator of the Fund;
- (g) compile, update and forward progress reports to the Committee on quarterly basis;
- (h) liaise with law enforcement and criminal justice agencies and encourage peer review; and
- (i) assist in capacity building to fund law enforcement and criminal justice system agencies.

Capital of the Fund.

7. The initial capital of the Fund shall be twenty (20) Million Shillings as appropriated by Parliament in the financial year 2019 /20.

Expenditure on the Fund.

8. (1) The expenditure incurred on 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 Committee at the beginning of the financial year to which they relate.

(2) Any revision of the approved annual work programme, and of any cost estimate, shall be referred to the Committee for approval.

Fund disbursements.

9. The funds shall be disbursed under the following conditions-

- (a) all disbursements from the Fund shall be approved and minuted by the Committee in respect of confiscated assets;
- (b) compensation to third party claims shall be pursuant to a court order;
- (c) all transfers to the Consolidated Fund shall be from all monies derived from concluded confiscation and forfeiture orders stipulated in Parts VII to X of the Act;
- (d) transfers to defray the expenses in respect of the administration of the Fund shall be as approved by the Committee for the respective financial year;
- (e) transfers towards investment of surplus funds shall be as approved by the Committee from time to time; and
- (f) the Fund shall set out other general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

Retention of receipts.

10. 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 use for the purpose for which the Fund is established.

Application of Government regulations and procedures.

11. Subject to the provisions of the Act, existing Government Regulations and Procedures shall apply in the administration of the Fund.

Administration of the Fund.

12. (1) The accounting officer of the Agency shall be the administrator of the Fund.

(2) The administrator of the Fund shall-

- (a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Committee and the National Treasury in accordance with the Act and these Regulations;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Cabinet Secretary on matters relating to the

administration of the Fund;

- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, upon the approval by the Committee, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Accounting Standards Board shall prescribe;
- (f) furnish additional information to the Auditor General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act;
- (g) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Public Finance Management Act, 2012 and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Committee for approval and subsequent transmission to the National Treasury and the Controller of Budget; and
- (h) be the custodian of all the assets, equipment and properties of the Fund.

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(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 quarter concerned.

(4) After the end of each month, the administrator shall prepare a revenue statement and submit it to the Cabinet Secretary for gazettelement.

Staff of the Fund.

13. (1)The Fund shall competitively recruit such number of staff as may be required for effective discharge of the mandate of the Fund, in consultation with the Cabinet Secretary and on advice of the Salaries and Remuneration Commission.

(2) Public officers may be seconded to the Fund upon request.

(3) Any public officer who is seconded to the Fund shall be regarded as a member of staff of the Fund and subject to the control of the Fund.

Preparation and submission of work plans, etc.

14. The administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and in preparing the work plan, projects and quarterly reports, the Administrator shall ensure the work plan, projects and quarterly reports-

- (a) contain information on the financial and non-financial performance of the Fund;
- (b) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

Approval of reports.

15. The work plans, projects and quarterly reports shall be prepared by the administrator of the Fund before submission to the Committee for approval.

Financial reports.

16. (1) The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act and as may be prescribed from time to time by the Public Sector Accounting Standards Board.

(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under sub regulation (1).

(3) The annual financial and non-financial statements under sub regulation (1) shall be approved by the Committee and submitted to the Auditor General for audit within three (3) months after the end of the financial year in accordance with the Public Audit Act, and a copy thereof submitted to the National Treasury.

Investment of funds.

17. Where in the opinion of the Committee it is appropriate to do so, the Committee may direct such sums from the Fund as it determines, be invested in government securities.

Annuity and winding-up of the Fund.

18. (1) The operations of the Fund shall be reviewed every ten (10) years.

(2) In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to the Fund.

(3) The administrator of the Fund shall prepare the final winding up report not later than six (6) months from the date of the decision to

wind up the Fund and submit the financial and non-financial report to the Auditor General for audit with a copy to the National Treasury.

(4) The Auditor General shall after audit, submit the final report to the National Assembly within three (3) months of the receipt of the initial report under sub regulation (3).

Made....., 2019.

UKUR YATANI,
Ag. Cabinet Secretary to the National Treasury.