



LEGAL NOTICE NO.

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

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

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

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

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

PART I—PRELIMINARY

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

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

“Administrator” means the Administrator of the Scheme who shall be the Cabinet Secretary;

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

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

“financial intermediary” means a commercial bank, microfinance institution, registered non-governmental organisations involved in financing, and savings and credit co-operative society; and

“Scheme” means the Credit Guarantee Scheme established under regulation 4.

Objects of the Scheme.

3. The objects of the Scheme shall be to—

- (a) improve and stimulate the national economy by encouraging additional lending to micro, small and medium enterprises, increasing investment opportunities for micro, small and medium enterprises and strengthening skills and capacities of proprietors of micro, small and medium enterprises;
- (b) facilitate the financing of micro, small and medium enterprises by partially guaranteeing credit advanced to the enterprises; and
- (c) create a conducive business environment and promote partnerships between the government and financial intermediaries with respect to credit guarantees for micro, small and medium enterprises and other related activities.

PART II—CREDIT GUARANTEE SCHEME

Establishment of the Scheme.

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

Funds of the Scheme.

5. The funds of the Scheme shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Scheme;
- (b) income generated from the proceeds of the Scheme;
- (c) income from investments made by the Scheme;
- (d) grants, donations, bequests or other gifts made to the Scheme; and
- (e) monies from any other source as may be approved by the Cabinet Secretary.

PART III—ADMINISTRATION OF THE SCHEME

Steering Committee.

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

- (a) the Principal Secretary in the Ministry responsible for matters relating to finance, who shall be the chairperson, or the Principal Secretary's representative;
- (b) the Principal Secretary in the Ministry responsible for matters relating to micro, small and medium enterprises or the Principal Secretary's representative;
- (c) the Attorney-General or the Attorney-General's representative;
- (d) the Governor of the Central Bank of Kenya or the Governor's representative; and
- (e) three independent members, not being public officers, appointed by the Cabinet Secretary who shall comprise of—
 - (i) one person with experience in banking and finance;
 - (ii) one person with experience in insurance; and
 - (iii) one person with experience as an entrepreneur in a micro, small or medium enterprise.

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

Functions of the Steering Committee.

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

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

7. The Steering Committee shall—

(a) oversee the administration of the Scheme;

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

(c) evaluate applications for participation from non-bank institutions and advise the Cabinet Secretary;

(d) advise the Cabinet Secretary on designating non-bank institutions as participating financial intermediaries;

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

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

(g) review the criteria for issuance of credit guarantees under the Scheme;

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

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

Administrator of the Scheme.

8. (1) The Administrator of the Scheme shall be the Cabinet Secretary or any other person designated by the Cabinet Secretary in writing for that purpose.

(2) The Administrator shall—

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

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

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

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

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

- (f) open an electronic ledger of all successful micro, small and medium enterprises, and participating financial intermediaries and maintain a record of the amount guaranteed, disbursed and the balances thereof;
- (g) 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 Scheme and showing the expenditure incurred from the Scheme, and such details as the Public Sector Accounting Standards Board may prescribe, in accordance with the provisions of the Public Finance Management Act, 2012, and Public Audit Act, 2015; and
- (h) 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.

Scheme Manager and staff.

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

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

Eligible borrowers.

10. (1) A borrower shall be eligible for guarantee under the Scheme if the borrower —

- (a) is a micro, small or medium enterprise;
- (b) is registered as a business or company under the relevant laws;
- (c) is registered by a county government and holds a valid business permit or trade licence;
- (d) has complied with the relevant tax laws;
- (e) is not part of any group or enterprise which would otherwise not be eligible for a credit guarantee under these Regulations;
- (f) intends to use the credit advanced for business purposes, including—
 - (i) working capital requirements of the enterprises;
 - (ii) acquisition of assets; or
 - (iii) rebuilding businesses affected by natural disasters or other financial crises;

- (g) is credit-worthy;
- (h) does business in Kenya; and
- (i) satisfies any other condition that may be imposed by the Steering Committee before the credit guarantee is granted.

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

Ineligible
borrowers.

11. A borrower shall not be eligible for a credit guarantee under the Scheme if—

- (a) the credit facility relates to risks which are already covered by the Government, any other credit guarantee, insurer or indemnity, to the extent so covered;
- (b) the credit facility is inconsistent with any prudential guidelines issued by the Central Bank of Kenya or under any other written law;
- (c) the borrower already enjoys a credit guarantee for another credit facility under these Regulations and the lending institution has invoked the guarantee;
- (d) the borrower has been sanctioned by a financial intermediary against collateral security or third-party guarantee;
- (e) the borrower is a financial intermediary or a state corporation;
- (f) the borrower is not a micro, small or medium enterprise; or
- (g) the credit facility is intended for an unlawful purpose.

Eligible financial
intermediaries.

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

- (a) is an institution licensed by Central Bank of Kenya or any other institution as may be designated by the Cabinet Secretary;
- (b) has experience in extending and managing credit facilities to micro, small and medium enterprises;
- (c) commits to extend credit facilities to micro, small and medium enterprises which shall be at least four times the amount that the Scheme will guarantee;

- (d) has a wide geographical network;
- (e) has a wide sectoral coverage in its portfolio of credit facilities that have been extended to micro, small and medium enterprises; and
- (f) has maintained a portfolio quality that is above the market average as demonstrated by low non-performing ratios on credit facilities that have been extended to micro, small and medium enterprises.

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

Applications by financial intermediaries.

13. (1) An eligible financial intermediary which wishes to obtain a guarantee from the Scheme on part of a credit facility extended to a micro, small or medium enterprise from shall apply in writing to the Administrator.

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

- (a) multiples of guarantee value the financial intermediary intends to extend to micro, small and medium enterprises;
- (b) size of credit extended by the financial intermediary to micro, small and medium enterprises both in total amount and as a proportion of total lending;
- (c) performance of the credit facilities the financial intermediary has extended to micro, small and medium enterprises, including the ratio of non-performing credit facilities;
- (d) sectors covered in the financial intermediary's micro, small and medium enterprise borrowers;
- (e) geographical distribution of the financial intermediary's branch network; and
- (f) any other information that may be required by the Administrator for purposes of achieving the objects of the Scheme.

(3) Before an eligible financial intermediary is allowed to participate in the Scheme, the financial intermediary shall undertake in writing to submit to the Administrator reports on the value of credit extended to micro, small and medium enterprises under these Regulations in accordance with regulation 15.

Conditions for guarantee by the Scheme.

14. (1) A participating financial intermediary shall—

- (a) evaluate applications for credit facilities by using prudent banking

criteria;

- (b) exercise business discretion and use due diligence in approving commercially viable applications for credit facilities;
- (c) conduct the account of the borrowers with normal banking prudence; and
- (d) Provide access to affordable credit to the beneficiaries at preferential interest rates among other terms.

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

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

(4) The participating financial intermediary shall—

- (a) monitor the borrower account;
- (b) provide basic business support to the borrower that the financial intermediary provides its regular clients;
- (c) safeguard the primary securities taken from the borrower in respect of the credit facility in good and enforceable condition; and
- (d) ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and manner specified by the Scheme without delay.

(5) The payment of guarantee claims by the Scheme to participating financial intermediaries shall not take away the responsibility of the financial intermediaries to recover the outstanding amounts of the credit facilities that are due from defaulting borrowers.

(6) Any money paid by the Scheme on a guarantee shall be a debt due to the national government from the borrower whose loan was guaranteed and be recoverable from the borrower as a debt due to the national government.

(7) Any recoveries made on a defaulted credit facility after a guarantee has been paid shall be shared between the participating financial intermediary and the Scheme in line with the risk-sharing formula.

(8) The financial intermediary shall—

- (a) exercise all the necessary precautions and maintain its recourse to the borrower for the entire amount of the credit facility owed to it

and initiate such necessary action for recovery of the outstanding amount, including such action as may be recommended by the Steering Committee;

- (b) comply with the directions of the Steering Committee for facilitating recoveries of the defaulted credit facility or safeguarding its interest as a guarantor;
- (c) in respect of any defaulted account, exercise the same diligence in recovering the amount in default, and safeguarding the interest of the Scheme in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Scheme;
- (d) refrain from any act or omission, either before or subsequent to invocation of the guarantee, which may adversely affect the interest of the Scheme;
- (e) ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor without notifying the Scheme in writing; and
- (f) secure for the Scheme through a stipulation in an agreement with the borrower, the right to share the borrowers' details and any other information provided by the borrower under these Regulations.

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

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

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

- (a) the amount in default in respect of the credit facility has not been paid and the facility has been classified as non-performing;
- (b) the guarantee in respect of that credit facility was in force at the time the facility became non-performing under the prudential guidelines;
- (c) a lock-in period of three months from either the date of last disbursement of the loan to the borrower or the date of payment of

the guarantee fee in respect of credit facility to the borrower, whichever is later, has elapsed; and

- (d) the credit facility has been recalled and the recovery proceedings have been initiated under due process of law.

(12) The claim shall be preferred by the financial intermediary in such manner and within such time as may be specified by the Steering Committee.

(13) In this section, “amount in default” means the principal amount outstanding in the account of the borrower in respect of credit facilities as at—

- (a) the date of the account becoming a non-performing facility;
- (b) the date of lodgement of claim application; or
- (c) such other reasonable date as may be specified by the Scheme for preferring any claim against the guarantee cover subject to the maximum level guaranteed, whichever is earlier.

Submission of reports on credit guarantee

15. (1) A participating financial intermediary shall submit daily reports to the Administrator on the credit guarantees issued under these Regulations.

(2) A participating financial intermediary submitting a report on credit guarantees shall submit the report not later than seven days of the end of the previous month.

(3) A report submitted by a participating financial intermediary shall include information on—

- (a) the total value of credit guarantees extended by the financial intermediary by the Scheme during that period;
- (b) total value of credit committed by the participating financial intermediary under the Scheme during that period;
- (c) the total value of credit guarantees given to the participating financial intermediary at the date of the report;
- (d) the total value of credit guarantees given to the participating financial intermediary disaggregated into enterprises owned by women, youth and persons living with disability whose credit facilities have been guaranteed;
- (e) the total value of credit guarantees given to the participating financial intermediary disaggregated into the number of micro, small and medium enterprises whose credit facilities have been

guaranteed and by county of operation; and

- (f) any other information as may be required by the Administrator for furtherance of the objects of the Scheme.

Administrator may prescribe additional conditions.

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

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

- (a) maximum size of the credit facilities that may be guaranteed under these Regulations with respect to a credit facility or class of credit facilities;
- (b) contributions by the financial intermediaries for purposes of expanding the Scheme and contributing to job creation;
- (c) extent of the liability of the Scheme to a participating financial intermediary if the financial intermediary fails to comply with these Regulations;
- (d) variation of the terms and conditions of an agreement if a financial intermediary fails or refuses to comply with these Regulations;
- (e) the documents, information and reports that the participating financial intermediaries may be required to submit to the Scheme;
- (f) manner of giving of information to the Scheme for the purposes of the making of an agreement;
- (g) requirements in relation to the transfer of any rights and liabilities under a credit facility agreement; and
- (h) such other matters as the Administrator may consider necessary for the purposes of the Scheme.

Investment of surplus funds.

17. The Administrator may invest any of the funds of the Scheme which are not immediately required for its purposes in Government securities as may be approved by the Cabinet Secretary and in accordance with the provisions of the Act.

PART IV—MISCELLANEOUS PROVISIONS

Annual estimates of the Scheme.

18.(1) Before the commencement of each financial year, the Steering Committee shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

(2) The annual estimates shall provide for all the estimated expenditure

of the Scheme for the financial year concerned and, in particular, shall provide for the—

- (a) administrative operations of the Scheme;
- (b) payment of the salaries, allowances and other charges in respect of the staff of the Scheme;
- (c) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Scheme;
- (d) provision of training, research and development of activities of the Scheme; and
- (e) provision of funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment; of the Scheme.

(3) The annual estimates shall be approved by the Steering Committee before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

(4) The expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved under subsection (3).

Audit of the Scheme.

19. (1) The Steering Committee shall cause to be kept proper books and records of accounts and statements of income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Steering Committee shall submit to the Auditor-General the accounts of the Scheme in respect of that year together with—

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

(3) The financial and non-financial statements of the Scheme shall be prepared and audited in accordance with the Public Audit Act, 2015.

(4) Every statement of account shall include details of the balance between the assets and liabilities of the Scheme, and shall indicate the financial status of the Scheme at the end of the financial year to which the statement relates.

Financial year.

20. The financial year of the Fund shall be the period of twelve months ending on the thirtieth June in each year.

Offences and penalties.

21. (1) A person who—

- (a) wilfully applies any proceeds of a guaranteed credit facility to any purpose other than the purpose for which the credit was approved;
- (b) having obtained a guaranteed credit facility, wilfully destroys or misappropriates any security given in relation to the guaranteed facility;
- (c) knowingly gives false information; or
- (d) wilfully destroys any asset used as a collateral by a financial intermediary,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both.

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

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
 - (b) purporting to act in any such capacity as provided in paragraph (a),
- also commits that offence.

Winding up.

22. If the Scheme is wound up, the cash balances held by the Scheme shall be transferred to the Exchequer while other assets of the Scheme shall be transferred to the Government.

Made on the, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning