LEGAL NOTICE NO. 46

THE GOVERNMENT FINANCIAL MANAGEMENT ACT

(No. 5 of 2004)

IN EXERCISE of the powers conferred by sections 26 and 35 of the Government Financial Management Act, 2004, the Minister for Finance makes the following Regulations:

THE GOVERNMENT FINANCIAL MANAGEMENT (PARLIAMENTARY MORTGAGE SCHEME FUND) REGULATIONS, 2008

1. These Regulations may be cited as the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations, 2008.

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

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

"Commission" means Parliamentary Service Commission established under the Constitution;

"Committee" means the Loans Management Committee established by regulation 6;

"financial" year means the period of twelve months ending on the 30th June of each year;

"Member" means a member of the National Assembly and includes a member of staff of the Commission;

"Officer Administering the Fund" means the Clerk of National Assembly;

"Fund" means the Parliamentary Mortgage Scheme Fund established by regulation 3;

"staff" means an employee of the Parliamentary Service Commission who is on permanent and pensionable terms of service;

"valuer" means a person registered as a valuer under the Valuers Act.
<table>
<thead>
<tr>
<th>Establishment of the Fund.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective of the Fund.</td>
</tr>
<tr>
<td>Capital of the Fund.</td>
</tr>
<tr>
<td>Management of the Fund.</td>
</tr>
</tbody>
</table>

3. There is hereby established a Fund to be known as the Parliamentary Mortgage Scheme Fund.

4. The objective of the Fund shall be to provide a loan scheme for the purchase, development, renovation or repair of residential property by members.

5. (1) The initial capital of the Fund shall be the sum of ninety million shillings which shall be paid out of Vote of National Assembly for the 2001/2002 financial year.

(2) Additional capital shall be appropriated in subsequent financial years so as to raise the total capital of the Fund to two billion shillings

(3) All the monies of the Fund shall be paid into an account operated by the Officer administering the Fund or a mortgage institution appointed under these Regulations.

6. (1) The administration of the Fund shall be carried out by the Loans Management Committee.

(2) The Loans Management Committee shall comprise of—

(a) the vice-chairman of the Commission who shall be the chairman;

(b) the chairman of the Member's Welfare Sub-Committee of the National Assembly;

(c) the Government Chief Whip;

(d) the Opposition Chief Whip;

(e) the chairman of Staff Welfare Sub-Committee of the National Assembly;

(f) the Clerk of the National Assembly;

(g) the Permanent Secretary in the Ministry responsible for finance or a representative appointed by him or her in writing; and

(h) the Attorney-General or a representative appointed by him or her in writing.

(3) The responsibilities of the Committee shall be to—

(a) process applications for loans in accordance with the existing terms and conditions of borrowing;

(b) liaise with the housing company (if any) to set up to set up a revolving fund for the disbursement of the loans; and

(c) supervise the day-to-day running of the Fund.

(4) The quorum for a meeting of the Committee shall be the chairman and any three members.

7. Notwithstanding regulation 6 (3), the Commission may if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

Commission may appoint mortgage institution.
8. (1) A member who wishes to apply for a loan from the Fund shall make such application to the Officer Administering the Fund in such manner as the Committee may prescribe.

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family:

Provided that a loan for development of residential property may be granted at the discretion of the Committee to a member who is in possession of a title deed to the land on which the development is intended to be carried out.

9. A loan granted for the development of residential property under these Regulations shall be released to the applicant in the following phases—

(a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and

(b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

(a) copies of the designs of the proposed residential property duly approved by the local authority within whose area it is to be situated;

(b) bills of quantities in respect of the proposed development, renovation or repair;

(c) an official search of the title to the property intended to be purchased;

(d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Commission.

11. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least forty-five years beyond the final loan repayment date.

12. (1) The maximum loan to be granted under these Regulations to a member of the National Assembly shall be a sum equivalent to the member's net emoluments at the time of application multiplied by the number of months remaining for the life
of that Parliament but subject to a maximum of forty-eight months.

Provided that—

(a) loan granted to a member of the National Assembly under these Regulations shall not exceed the sum of fifteen million shillings;

(b) the last twelve months of the final year of the life of Parliament shall not be taken into account when computing the remaining life of Parliament as such period shall be considered as an election year.

(2) A member of the National Assembly shall be required to give prior authority in writing for pension dues to be utilized to clear any outstanding debt in case the member loses the parliamentary seat before fully repaying the loan.

(3) The maximum loan entitlement for a member of staff of the Commission shall be equivalent, to a maximum of ten years house allowance payable to him, but subject to the number of years remaining before retirement or the cost of the property,

Provided that—

(a) such maximum amount shall not exceed the respective amounts set out in the second column of the Schedule in respect of members of staff of the designations or Job Group scales specified in the first column of that Schedule;

(b) for a member of staff to qualify for a loan, such member shall be required to be—

(i) confirmed in appointment and to have served for more than three years; or

(ii) on contract with the Parliamentary Service Commission with the relevant documentation duly completed.

(4) A loan granted to a borrower under these Regulations shall be funded at the rate of—

(a) ninety per centum of the value of the property, where such property is situated in Nairobi; and

(b) eighty per centum of such value where the property is situated in any other area, and the borrower shall be required to deposit the balance thereof with the Fund.

13. A loan granted under these Regulations shall be repayable—

(a) within a maximum period of fifty-four months, for a member of Parliament, provided that the loan shall be fully paid on or before six months to the end of that Parliament; and

(b) within a period of fifteen years or the remaining period of service of the borrower, whichever is less, for a member of staff.
14. (1) The interest chargeable on a loan shall be three per centum per annum on a monthly reducing balance and this rate may be revised from time to time at the discretion of the Commission.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may charge an interest of not more than four per centum to cover management costs.

(3) The interest charged under paragraphs (1) and (2) of this regulation shall be met by the borrower.

15. (1) The Commission shall have a charge registered on the property financed through a loan granted under these Regulations and shall be entitled to have its name entered in all documents of title for such property.

(2) The borrower shall—

(a) not mortgage, charge, surrender the lease, or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Commission;

(b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Commission; and

(c) provide a transfer deed duly signed by the borrower and a letter authorizing the Commission to sell the property in case of default in payment.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Commission.

(4) During the loan repayment period, every borrower shall—

(a) ensure that the property is used for residential purposes only;

(b) maintain the property in a satisfactory state of repair; and

(c) not alter or make any structural alteration to the property, carry out any valuation, assessment, or investigation relating to the property or the title thereto, as the case may be, without the approval of the Commission.

(5) No borrower shall be eligible for more than one loan at a time or more than a total of two loans from the Fund.

(6) All legal documentation and disbursement of funds shall be supervised by the Officer Administering the Fund.

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Commission, the cost of which shall be paid out of the Fund and debited in such borrower's account.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the Officer Administering the Fund.
17. The Commission may call in the loan and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the mortgage instrument.

18. (1) The Officer Administering the Fund shall—
   (a) supervise and control the administration of the Fund;
   (b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
   (c) cause to be kept books of account and other records in relation to the Fund of all the loans financed from the Fund;
   (d) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, in such details as the Treasury may from time to time direct; and
   (e) furnish such additional information as may be required for examination and audit by the Controller and Auditor-General by or under any law.

19. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be—
   (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
   (b) to charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
   (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
   (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
   (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and
   (f) upon default, to call in the loan and on behalf of the Commission sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

20. These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Commission and in the contract between the mortgage institution and the Commission.
21. (1) The Exchequer and Audit (Parliamentary Mortgage Scheme Fund) Regulations, 2002 are repealed.

(2) All the funds and other assets, rights, powers and liabilities which immediately before the coming into force of these Regulations, were vested in, imposed on or enforceable against the Fund repealed by paragraph (1) shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Fund.

SCHEDULE

Maximum Loan Entitlements for Members of Staff of the National Assembly

<table>
<thead>
<tr>
<th>Designation</th>
<th>Maximum entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk of the National Assembly</td>
<td>KSh. 10,000,000</td>
</tr>
<tr>
<td>PSC 15</td>
<td>KSh. 10,000,000</td>
</tr>
<tr>
<td>PSC 14, 13 and 12</td>
<td>KSh. 8,000,000</td>
</tr>
<tr>
<td>PSC 11, 10 and 9</td>
<td>KSh. 6,000,000</td>
</tr>
<tr>
<td>PSC 8</td>
<td>KSh. 5,000,000</td>
</tr>
<tr>
<td>PSC 7</td>
<td>KSh. 4,000,000</td>
</tr>
<tr>
<td>PSC 6</td>
<td>KSh. 3,500,000</td>
</tr>
<tr>
<td>PSC 5</td>
<td>KSh. 3,200,000</td>
</tr>
<tr>
<td>PSC 4</td>
<td>KSh. 2,800,000</td>
</tr>
<tr>
<td>PSC 3</td>
<td>KSh. 2,500,000</td>
</tr>
</tbody>
</table>

Made on the 2nd May, 2008.

AMOS KIMUNYA,

Minister for Finance,