LEGAL NOTICE NO. 4

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

IN EXERCISE of the powers conferred by section 116(1) of Public Finance Management Act, 2012, the Turkana County Executive Member for Finance, hereby makes the following Regulation—

THE PUBLIC FINANCE MANAGEMENT (TURKANA COUNTY EXECUTIVE STATE AND PUBLIC OFFICERS CAR LOAN SCHEME FUND) REGULATIONS, 2016

Citation

1. These Regulations may be cited as The Public Finance Management (Turkana County Executive State and Public Officers Car Loan Scheme Fund) Regulations, 2016.

Interpretation

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

“Act” means the Public Finance Management Act, 2012

“Financial year” means the period of twelve months ending on the 30th June in each year;

‘borrower’ means a person in receipt of a car loan out of the Fund;

‘Committee’ means the Loan Management Committee established under regulation 7 of these Regulations;

“Officer administering the Fund” means the Administrator appointed under regulation 8;

“Government” means the Turkana County Government;

“Executive Committee member” means the County Executive Committee member responsible for Finance;

“Public Officer” means any person appointed by the County Government and holding or acting in any County public office whether Paid, unpaid or on contractual or permanent terms but does not include a person engaged on a part time basis in a county public body paid at an hourly or daily rate;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee;

‘Member of the Scheme’ means County Executive State and Public Officers of Turkana County Government appointed pursuant to Article 179(1) of the constitution, recruited by the Board and others being on secondment under permanent and pensionable terms within the public service;

‘Board’ means County Public Service Board established under section 57 of the County Government Act, No. 17 of 2012.

Establishment of the Fund

3. There is hereby established a Fund to be known as the Turkana County Executive State and Public Officers Car Loan Scheme Fund.
Object and Purpose of the Fund

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase of motor vehicles by County Executive State and Public Officers of the County Government as prescribed by the Salaries and Remuneration Commission in their letter dated 17th December 2014 referenced as SRC/ADM/CIR/1/13/ Vol. III (128)

Initial Capital and other resources of the Fund

5. (1) The initial capital of the Fund shall be Kenya Shillings One Hundred and twenty three Million (KSH. 123,000,000) consisting of monies appropriated by the County Assembly in the supplementary appropriation FY2015/2016.

(2) Other resources of the Fund shall consist of—

(a) all sums of money received by or falling due to the Fund in respect of loans made there from and the interest on those loans;

(b) any amounts that may from time to time be allocated by Government and appropriated by the County Assembly;

(c) all sums of money borrowed by the Committee with the approval of the County Assembly subject to provisions of section 142 of Public Finance Management Act for the purpose of exercising any of its functions or discharging any of its obligations;

(d) all sums of money earned by or arising from investment made in respect of the Fund;

(e) all other sums of money that may in any lawful manner become payable to or vested in the Fund including gifts, grants, wills and donations.

Financial Institution

6. The Committee may appoint a financial institution to administer the Fund on its behalf.

The Loans Management Committee

7. (1) There is established a committee to be known as the Loans Management Committee, which shall consist of—

(a) chairperson — The County Secretary;

(b) vice-chairperson—Chief Officer Public Service, Decentralized Administration and Disaster Management;

(c) secretary — Chief Officer Finance and Planning;

(d) member — Chief Officer - Roads, Transport & Infrastructure;

(e) member — Director- Urban Areas Management;

(f) member — Director - Supply Chain Management;

(g) member — Director of HRM;

(h) member — Deputy Director HRM and payroll Management;

(i) two members of staff, male and female nominated by the staff members; and

(j) the County Executive Legal Officer as ex, officio Member.
The Functions of the Committee

(2) The committee shall—

(a) consider and may approve the loan applications presented by the officer administering the Fund;

(b) open an account under the names Turkana County Car Loan and Mortgage Scheme in a recognized commercial bank; and

(c) the Chairperson of the Committee, the Secretary to the Committee and one members appointed by CEC Finance among the committee shall be the mandatory signatories to the account.

(3) The officer administering the Fund designated under regulation 8 shall be an ex-officio member of the Committee and the secretary to the Committee.

(4) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson, and shall be convened at such times as may be necessary for the discharge of the Committee’s functions.

(5) The quorum for a meeting of the Committee shall be chairperson and any other four members.

(6) The Committee may organize itself into sub-committees for purposes of effective administration of the Fund.

Administration of the Fund

8. (1) The County Executive Committee member for finance shall designate a person to be the officer administering the Fund in accordance with section 116(2) of the Act, with the approval of the County Assembly.

(2) The person designated in paragraph (1) may also be designated as the officer administering the Mortgage Fund.

(3) The officer administering the Fund shall—

(a) supervise and control the administration of the Fund;

(b) may impose conditions on the use of any moneys in the Fund and may also impose any reasonable restriction or other requirement concerning such use;

(c) cause to be kept proper books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;

(d) prepare, sign and transmit to the 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, specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Executive Committee member may from time to time direct in accordance with Public Finance Management Act;

(e) cause the safe keeping of log-books for all motor vehicles acquired under the Fund;

(f) furnish such additional information as he or she may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General.
Operation of the Fund

9. (1) A member of the scheme who wishes to apply for a loan from the Fund shall present to the officer administering the Fund a duly completed purchase proposal in such a form as the Committee may prescribe.

(2) The officer administering the Fund shall satisfy himself or herself of the applicant’s financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) If the Committee approves the application, the applicant shall enter into a hire purchase agreement in the prescribed form subject to a valuation by the Automobiles Association of Kenya.

(4) All decisions of the Committee shall be made through minuted resolutions.

Release of Funds

10. (1) A loan approved under regulation 9 shall be released from the Fund in such a manner, taking into account the security of the funds and preferably to the vendor of the motor vehicle.

(2) The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the Turkana County Government and the member of the Scheme and shall be kept in the custody of the officer administering the Fund until the Loan is repaid in full by the member of the Scheme.

Renewal of licences

11. (1) The officer administering the Fund shall be responsible for renewal of necessary licenses.

(2) The cost incurred in paragraph (1) shall be borne by the borrower.

Loan amounts

12. (1) The maximum loan amount that a member of the Scheme may receive shall be subject to the SRC circular.

(2) Notwithstanding the provisions of paragraph (1), no member of the Scheme shall receive a loan the repayment of which shall result in salary deductions exceeding two thirds of the monthly emoluments of the member of the Scheme.

(3) For the purposes of these Regulations, the value of the new motor vehicle shall be quoted on the invoice from the supplier where the value of a used motor vehicle shall be as determined by a report from a body known as the Automobile Association of Kenya or the Government department dealing with such matters.

Repayment of loan

13. The repayment of the loan granted under these Regulations shall be made through a check-off system from the member’s monthly emoluments using Loan check-off forms prescribed by the Committee.

Interest rate

14. (1) The loan granted to a member of the Scheme under these Regulations, shall carry an interest rate of three per cent (3%) per annum in accordance with Salaries and Remuneration Commission requirements.

(2) The interest charged under paragraph (1) shall be utilized to defray the administrative expenses of the Fund.
Repayment period

15. A loan advanced under these Regulations shall be repaid in full over a maximum period of sixty months or by the end of the member’s term as state officers whichever comes earlier.

Insurance

16. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Scheme.

(2) Where a member of the Scheme is unable to raise the funds required for the initial insurance premium, such funds may be advanced from the Fund subject to limit approved by the Committee, but subsequently annual premiums shall be paid by the member of the Scheme.

(3) A member of the Scheme who is unable to pay the subsequent annual premiums referred to in paragraph (2) may apply to the Committee for a loan from the Fund which shall be repaid within a period of one (1) year.

(4) Every loan granted under these Regulations shall be insured through an Insurance service provider competitively sourced by the Committee for the benefit of the member of the Scheme and the premium in respect thereof shall be debited to the account of the member.

Recovery of Loan

17. Where a repayment of loan is not made in accordance with the terms and conditions in these Regulations, the sums of money due and owing to the Fund shall be recoverable by the Committee, without prejudice to any other remedy, in civil proceedings in the High Court.

Responsibilities of financial institution

18. The responsibilities of the financial institution appointed under these regulations shall be—

   (a) to operate individual accounts for each borrower, which shall provide details of recoveries of loan;

   (b) to charge security on vehicles 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) upon default, to call in the loan and on behalf of the Committee 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 the sale.

Loan discharge

19. (1) Upon full repayment of the loan, a signed loan discharge certificate in such form as may be prescribed by the Committee shall be issued to the member of the Scheme and a copy thereof shall be forwarded to the Registrar of Motor vehicles.

   (2) The loan discharge certificate shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the motor vehicle pursuant to regulation 10.

Proper books of accounts

20. (1) The officer administering the Fund shall be responsible for maintenance of proper books of accounts and the preparation of annual financial statements which
shall include but not limited to the following—
(a) income and expenditure account;
(b) statement of financial position; and
(c) statement of cash flows.

(2) The officer administering the Fund shall ensure that the accounts for the Fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(3) The officer administering the Fund shall cause to be prepared quarterly returns to be submitted to County Executive Member and the Committee on or before the tenth day after the end of the quarter.

(4) The annual financial statements of the Fund shall be subject to audit by the Auditor-General.

Supplementary terms

21. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Committee and in the contract between the financial institution and the Committee.

(2) Subject to these Regulations, the Committee shall issue guidelines on—
(a) the criteria for approving and disbursing loans to borrowers; and
(b) such other matters as may be necessary for the proper management and administration of the Fund.

Power to give guidelines.

22. The County Executive Committee member may, with the approval of the County assembly, provide guidelines generally for the proper carrying out of the purposes and provisions of these regulations and in particular, may make provisions—
(a) for the administration, management and investment of the resources of the Fund;
(b) on the information a member of the Scheme to whom a loan is granted under these Regulations may furnish from time to time as may be required by the Committee;
(c) on the basis on which a loan may be obtained;
(d) on the procedure to be followed prior to the obtaining of a car loan and for payment of the amount due on a loan together with any interest thereon;
(e) on anything which may be or is required to be prescribed under this regulation.

Made on the 5th February, 2016.

PAUL EKWOM NABUIN,

The County Executive Committee Member, Finance and Planning.