LEGAL NOTICE NO. 5

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 County Executive Member for Finance, Turkana County Government, makes the following Regulation—

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

Citation

1. These Regulations may be cited as the Public Finance Management (Turkana County Executive State and Public Officers Mortgage 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 mortgage out of the Fund;

   “Committee” means the Loan Management Committee established under these Regulations;

   “Officer administering the Fund” means the Administrator appointed under regulation 7;

   “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;

   “residential” means a house used for occupation by applicant and his or her immediate family;
“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 established a Fund to be known as the Turkana County Executive State and Public Officers Mortgage 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, development, renovation or repair of residential property by Turkana County Executive State and Public Officers 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 Eighty Million (KSH. 80,000,000) 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 the 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.

Loans Management Committee

6. (1) There is established a committee to be known as the Members Mortgage 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;

(d) member—Chief Officer - Roads, Transport and 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 County Public Service Board; and

(j) the County Executive Legal Officer as *Ex Officio* Member.

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

(3) 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.

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

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

(6) The Committee shall administer the Fund and shall—

(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 a revolving fund for the disbursements of the loans; and

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

Administration of the Fund

7. (1) The County Executive Committee member for finance shall designate a person responsible for administering of the Fund in accordance with section 116(2) of the Act.

(2) The person designated in paragraph (1) may also be designated as the officer administering the Car Loan Scheme 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 months after the end thereof, a statement of accounts relating to the Fund, prepared 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;
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(e) cause the safe keeping of documents for all properties acquired under the Fund.

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

(4) In order to effectively administer the Fund, the Officer Administering the Fund may request the Committee to hire staff for the Fund. The terms and conditions of service of staff shall be determined by the Committee and their salaries, wages and other expenses shall be a charge on the Fund.

Mortgage institution

8. The Committee may appoint a mortgage institution to administer the Fund on its behalf.

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) 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.

(4) A loan for the development of residential property may be granted at the discretion of the Committee—

(a) to a member of the Scheme who is in possession of a title deed to the land on which the development is intended to be carried out;

(b) in two installments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(5) The amount of the first installment granted for the purchase of land under paragraph (3) (b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

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

Disbursement of loans for development

10. A loan granted for the development of a 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 or quantity surveyor at the cost of the applicant.
Application for loan

11. (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 relevant Government department;
(b) bills of quantities in respect of the proposed development, renovation or repair;
(c) an official search of the title and or allotment letter accompanied by requisite documents to the property intended to be purchased;
(d) a certified copy of the sale agreement relating to the property; and
(e) a valuation report from a registered valuer.

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

(3) Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the salary of that borrower in such installments as may be appropriate and remit such deductions to meet such costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by the County Legal Officer and or advocate appointed by the committee.

Leasehold property

12. 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.

Loan amounts

13. The maximum loan amount that a member of the Scheme may receive shall be subject to the relevant 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) A loan granted to a borrower under these Regulations shall be funded at the rate of eighty per cent (80%) of the value of the property and the borrower shall be required to deposit the balance thereof with the Fund.

(4) Subject to these Regulations, a member of the Scheme shall be eligible for the maximum amount of loan specified under paragraph (1) or any other maximum as may be determined from time to time in each Executive term.

Repayment of loan

14. 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

15. (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.
(2) The interest charged under paragraph (1) of this regulation shall be met by the borrower.

Repayment period

16. A loan advanced under these Regulations shall be repaid in full over a maximum period of twenty (20) years or by end of the member’s term as state officers whenever comes earlier.

Mortgage Insurance

17. A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance company competitively sourced by the Committee, the cost of which shall be paid out of the Fund and debited in the borrower’s account.

Property documents

18. (1) 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.

(2) Documents referred to in paragraph (1) shall include title deeds, allotment letters and authentic sale agreements.

Default in repayment of loan

19. The Committee may call in a 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.

Responsibilities of mortgage institution

20. The responsibilities of the mortgage 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 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) 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
(e) 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

21. 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 mortgage institution.

Loan processing procedures

22. The Committee shall prescribe the procedures and the criteria for loan processing and award subject to the provisions of these Regulations.
Proper books of accounts

23. (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 Executive Committee Member and the Committee on or before the tenth day after the end of the quarter.

Audit of books of account and financial statements

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

Supplementary terms

25. 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 mortgage institution and the Committee.

(2) Subject to these Regulations, the Committee shall issue guidelines on—

(a) the purchase and development of land and residential properties under these Regulations;
(b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and
(c) such other matters as may be necessary for the proper management and administration of the Fund.

Power to give guidelines

26. The County Executive Committee member may, with the approval of the County Executive, amend the regulations generally for the proper carrying out of the purposes and provisions of these regulations and in particular, may make provisions—

(a) providing for the administration, management and investment of the resources of the Fund;
(b) requiring a member of the Scheme to whom a loan and is granted under these Regulations to furnish such information as may from time to time be required by the Committee;
(c) prescribing the basis on which a loan may be obtained;
(d) prescribing the procedure to be followed prior to the obtaining of a mortgage loan and for payment of the amount due on a loan together with any interest thereon:
(e) prescribing anything which may be or is required to be prescribed under this regulation.

Made on the 5th February, 2016.

PAUL EKWOM NABUIN,
County Executive Committee Member for Finance and Planning.

LEGAL NOTICE No. 6

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 County Executive Member for Finance, Turkana County Government, 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 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/1/1/3/ 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 or his designate;

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

(c) secretary – Chief Officer Finance;

(d) member- Director- Urban Areas Management;
Turkana County Subsidiary Legislation, 2016

(e) member- Director of HRM;
(f) member- Deputy Director HRM and payroll Management;
(g) two members of staff, male and female nominated by the County Public Service Board;
(h) 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,
County Executive Committee Member for Finance and Planning.

LEGAL NOTICE NO. 7

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (TURKANA COUNTY ASSEMBLY
STAFF MORTGAGE SCHEME FUND) REGULATIONS, 2016.

Citation

1. These Regulations may be cited as the Public Finance Management (Turkana
County Assembly Mortgage Scheme Fund) Regulations, 2016.

Interpretation.

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

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

"Board" means the Turkana County Assembly Service Board established under
section 12 of the County Government Act;

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

"County Assembly" means the Turkana County Assembly;

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

"Fund" means the Turkana County Assembly Staff Mortgage Scheme Fund
established under section 116 (1) of the Public Finance Management Act, 2012;

"Member of the Scheme" means an employee of the County Assembly Service
Board who is employed on permanent and pensionable terms; "Government" means the
County Government of Turkana as specified in the first schedule of the Constitution of
Kenya, 2012;

"Officer administering the Fund" means the Clerk of the Turkana County
Assembly;

"Property" means a residential house purchased through a loan from the Fund and
includes the land purchased under loan from the Fund on which such house is to be
developed; and
"Valuer" means a person registered as a valuer under the Valuers Act.

Establishment of the fund

3. There is established a Fund under the County Assembly Service Board to be known as the Turkana County Assembly Staff Mortgage Scheme Fund.

Object and purpose of the Fund

4. The object and purpose of the Fund shall be to provide a loan of the scheme for the purchase, development, renovation or repair of residential property by members of the Scheme as prescribed by the Salaries and Remuneration Commission.

Initial Capital and other resources of the Fund

5. (1) The initial capital of the Fund is the amount of Kenya Shillings one hundred and twenty Eight Million (Kshs. 128,000,000) which is the monies appropriated by the county assembly in the financial year 2015/2016.

(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 amount that may from time to time be allocated by Government and appropriated by the County Assembly of Turkana;

(c) all sums of money borrowed by the committee with the approval of the County Assembly subject to provisions of section 142 of the Public Finance Management Act, 2012 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.

(3) The Fund shall be administered as a special Fund in the County Assembly Fund and shall be operated by the officer administering the Fund.

(4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the requirements of regulation 18 (1) (b) and be credited to the capital of the Fund.

Loans Management Committee

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

(a) The Clerk of County Assembly who shall be the Chairperson and the officer Administering the Fund;

(b) Principal Human Resource Officer of the County Assembly who shall be the Secretary;

(c) Two County Assembly staff members, a man and a woman, nominated by the County Assembly Service Board;

(d) Principal Legal Counsel of the County Assembly who shall be the ex-officio member of the Committee.
(c) Principal Finance Officer of the County Assembly:

Roles of the Loan Committee

(2) The Committee shall administer the Fund and shall—

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

(b) Liaise with the financial institution (if any) to set up a revolving fund for the disbursement of the loans; and

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

(3) The meetings of the Committee shall be convened by the chairman or in the absence of the chairman, 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.

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

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

Board may appoint mortgage institution

7. (1) Notwithstanding Regulation 6 (2), the County Assembly may, if it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf and to carry out the functions of the officer administering the Fund under Regulation 18 on behalf of the Board:

(2) For the purposes of sub-regulation (1), the Board may enter into a Memorandum of Understanding with such Mortgage or Financial Institution detailing the modalities for administering the Fund.

Utilization of monies

8. (1) A member of the Scheme 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 Loans Management 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.

(3) A loan for the development of residential property may be granted at the discretion of the committee—

(a) to a member of the Scheme who is possession of a title deed to the land and or allotment letter accompanied by requisite documents on which the development is intended to be carried out; or

(b) in two instalments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(4) The amount of the first installment granted for the purchase of land under paragraph (b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.
Disbursement of loans for development

9. (1) A loan granted for the development of a 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.

Application for a loan

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 or allotment letter accompanied by requisite documents 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) Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the salary of that borrower in such instalments as may be appropriate and remit such deductions to meet such costs as may be due.

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

Leasehold property

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

Maximum loan disbursement

12. (1) The maximum loan to be granted under these Regulations to a member of the Scheme shall be as prescribed by the Salaries and Remuneration Commission in their letter referenced SRC/ADM/CIR/1/13/ Vol. III (128) dated 17th December, 2014.

(2) A member of the Scheme shall be required to give prior authority in writing for pension dues and or gratuity to be utilized to clear any outstanding debt in case the member loses their job before fully repaying the loan.

(3) 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 Turkana; and
(b) ninety 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.

(4) Subject to this regulation, a member of the Scheme shall be eligible for the maximum amount of loan specified under sub-regulation (1) to be accessed by the member in a maximum of two disbursements in that term.

Repayment of loan

13. For staff of the county assembly, a loan granted under these Regulations shall be repayable within a period of fifteen years or the remaining period of service of the borrower, whichever comes earlier.

Interest on loans

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 reviewed from time to time as advised by the Salaries and Remuneration Commission.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may utilize the interest chargeable under paragraph (1) of this regulation, to defray its management and administration costs.

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

Lien

15. (1) The Board 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 Board;

(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 Board; and

(c) provide a transfer deed duly signed by the borrower and a letter authorizing the Board 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 Board.

(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 title thereto, as the case may be, without the approval of the Board.

(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.

**Mortgage insurance**

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Board, 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.

**Default in repayment**

17. The Board may call in a 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.

**Administration of the Fund**

18. (1) The officer administering the Fund shall —

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

(b) utilize the interest accruing hereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;

(c) cause to be kept 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, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act, 2012;

(e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and

(f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

**Responsibilities of mortgage institution**

19. The responsibilities of the mortgage institution, if any, of mortgage appointed under these Regulations shall be to —

(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;
Turkana County Subsidiary Legislation, 2016

(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, 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 Board 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.

Supplementary terms

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

(2) Subject to these Regulations, the Board shall issue guidelines on—

(a) the purchase and development of land and residential properties under these Regulations;

(b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and

(c) such other matters as may be necessary for the proper management and administration of the Fund.

Made on the 5th March, 2016.

PAUL EKWOM NABUIN,
County Executive Committee Member for Finance and Planning.

LEGAL NOTICE NO. 8

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (TURKANA COUNTY ASSEMBLY STAFF CAR LOAN SCHEME FUND) REGULATIONS, 2016.

Citation

1. These Regulations may be cited as the Public Finance Management (Turkana County Assembly Staff Car Loan Scheme Fund) Regulations, 2016.

Interpretation

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

“Act” means the Public Finance Management Act, 2012;

“borrower” means a person in receipt of a car loan out of the Fund:
“Government” means the Turkana County Government;

“Board” means the Turkana County Assembly Service Board established under section 12 of the County Governments Act, 2012;

“Committee” means the Loans Management Committee established under regulation 7;

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

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

“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;

“Fund” means the Turkana County Assembly Car Loan Scheme Fund established under these regulations(Members of the Turkana County Assembly Staff Car Loan Scheme Fund) Regulation 3, contained in the Second Schedule of the Public Finance Management Act;

“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 an employee of the County Assembly Service Board who is employed on permanent and pensionable terms; and

“Officer Administering the Fund” means the Clerk of the Turkana County Assembly.

Establishment of the Fund

3. There is established Turkana County Assembly Staff 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 vehicles by staff of the County Assembly as prescribed by the Salaries and Remuneration Commission in their letter referenced SRC/ADM/CIR/1/13/ Vol. III (128) dated 17th December, 2014.

Initial Capital

5. (1) The initial capital of the Fund shall be Kenya Shillings Sixty Five Million (KSh. 65,000,000) consisting of monies appropriated by the County Assembly in the 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 amount that may from time to time be allocated by Government and appropriated by the County Assembly of Turkana;

(c) all sums of money borrowed by the committee with the approval of the County Assembly subject to provisions of section 142 of the Public Finance
Management Act, 2012 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;

(c) 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.

(3) The Fund shall be administered as a special account in the Turkana County Assembly and shall be operated by the Officer Administering the Fund.

(4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the requirements of regulation 19 (b) and be credited to the capital of the Fund.

Financial Institution

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

Loans Management Committee

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

(a) The Clerk of the County Assembly who shall be the Chairperson and the officer administering the fund

(b) Principal Human Resource Officer of the County Assembly as the secretary;

(c) Two County Assembly staff member, Man and woman nominated by the County Assembly Service Board;

(d) Principal Legal Counsel of the County Assembly who shall be the ex-officio member of the Committee;

(c) Principal Finance Officer of the County Assembly.

(2) The meetings of the Committee shall be convened by the chairman or in the absence of the chairman, 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.

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

(4) The Committee shall consider and may approve the loan applications presented by the Officer Administering the Fund.

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

(6) The officer administering the Fund designated under regulation 9 shall be an ex officio member of the Committee and the secretary to the Committee.

Functions of the Loans Management Committee

8. The Committee shall administer the Fund and shall—

(a) process applications for loans in accordance with the existing terms and conditions of borrowing:
(b) liaise with the financial institution (if any) to set up a revolving fund for the disbursement of the loans; and

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

Administration of the Fund

9. The Officer Administering the Fund shall—

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

(b) utilize the interest accruing there to defray operating expenses, and may impose any reasonable restriction or other requirements 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 of the financial year, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act, 2012;

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

(f) designate and appoint such staff as may be necessary to assist him in the administration of the fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Operation of the Fund

10. (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 hire purchase proposal form in such form as the Management 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 such form subject to a valuation by the Automobile Association of Kenya.

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

Release of Funds

11. (1) A loan approved under regulation 10 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 Assembly 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

12. (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

13. (1) The loan amount that a member of the Scheme may receive shall be the value of the vehicle that the member of the Scheme proposes to purchase subject to the maximum amount as prescribed by the Salaries and Remuneration Commission in their letter referenced SRC/ADM/CIR/1/13/ Vol. III (128) dated 17th December, 2014.

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

(3) Notwithstanding the provisions of paragraph (1), there may be advanced from the Fund to a member of the Scheme an additional loan not exceeding ten per cent of the value of the vehicle purchased by the member of the Scheme to cater for an overhaul of the engine of the vehicle.

(4) 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.

Repayment of Loan

14. (1) The repayment of the loan granted under these regulations shall be made through a check-off system from the member’s monthly emolument using loan check-off forms prescribed by the Committee

Interest rate

15. (1) A loan granted to a member of the Scheme under these Regulations shall carry an interest rate of three per cent (3%) per annum.

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

Repayment Period

16. A loan advanced under these Regulations shall be repaid in full over a maximum period of sixty (60) months.

Insurance

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

(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 an approved limit, but subsequent 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 fund for a loan which shall be repaid within a period of one year (1) year.

(4) Every loan granted under these Regulations shall be insured for the benefit of the member of the Scheme and the premium in respect of the loan shall be debited to the account of the member of the Scheme.

Recovery of Loan

18. 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

19. The responsibilities of the financial institution if 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

20. (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 of the discharge certificate 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 vehicle pursuant to regulation 11.

Proper books of account

21. (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 Assembly Service Board on or before the tenth (10) day after the end of the quarter.

(4) the annual financial statements of the fund shall be subject to audit by the Auditor General

Temporary release of log-book

22. (1) A log-book kept in custody by the Officer Administering the Fund may be temporarily released to a member of the Scheme upon application in writing to the Officer Administering the Fund for purposes of renewal by that member of the necessary licences.

(2) A log-book released under paragraph (1) shall be returned to the Officer Administering the Fund within seven working days from the date of such release.

(3) The Officer Administering the Fund shall acknowledge receipt of the log-book in writing.

Supplementary terms

23. (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

24. 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 be 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 obtaining 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 March, 2016.

PAUL EKWOM NABUIN,  
County Executive Committee Member for Finance and Planning.