LEGAL NOTICE NO. 1

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (VIHIGA COUNTY ASSEMBLY MEMBERS AND STAFF MORTGAGE AND CAR LOANS SCHEMES FUND) REGULATIONS, 2015

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IN EXERCISE of the powers conferred by section 116 of the Public Finance Management Act, 2012, the Vihiga County Executive Committee Member for Finance makes the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (Vihiga County Assembly Members and Staff Mortgage and Car Loans Schemes Fund) Regulations, 2015.

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 Vihiga County Assembly Service Board established under section 12 of the County Government Act;

“County Assembly” means the Vihiga County Assembly;

“Commission” means the Salaries and Remuneration Commission;

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

“Fund” means the Vihiga County Assembly Members and Staff Mortgage and Car Loans Schemes Fund established under regulation 3.

“member” means a member of the Vihiga County Assembly;

“staff” means an employee of the County assembly of Vihiga employed by the Board on a permanent or contractual basis;

“Officer administering the Fund” means the Clerk of the Vihiga County Assembly duly appointed in accordance with section 13 of the County Government Act 2012;

“property” means a residential house purchased or developed 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.

PART II—ESTABLISHMENT OF THE SCHEMES AND THE FUND

3. There is established a fund under the Vihiga County Assembly Service Board to be known as the Vihiga County Assembly Members and Staff Mortgage and Car Loans Schemes Fund.

4. There is established under the Fund, two schemes for the benefit of the members and staff of the County Assembly, namely—

(a) the Vihiga County Assembly Mortgage Scheme; and

(b) the Vihiga County Assembly Car Loan Scheme.

5. The object and purpose of the Fund is to provide funds for the mortgage and car loan schemes to enable the members and staff of the Assembly to—
purchase, develop, renovate or repair their residential property; and
(b) purchase vehicles for personal use.

6. (1) The initial capital of the Fund shall consist of the sum appropriated by the County Assembly in the County Appropriation Act, 2013, as follows-
(a) one hundred and twenty Million Kenya Shillings for the mortgage scheme; and
(b) eighty million Kenya Shillings for the car loans scheme.
(2) The County Assembly may appropriate additional monies to the Fund.
(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 defrayment of the administrative expenses of the Fund under these Regulations, be credited to the capital of the Fund.

7. There is established a committee to be known as the Vihiga County Assembly Members and Staff Mortgage and Car Loans Schemes Fund Management Committee consisting of—
(a) the Vice-Chairperson of the Board who shall be the chairperson;
(b) the Chairperson of Budget and Appropriation Committee;
(c) the majority whip;
(d) the minority whip;
(e) two Members of the County Assembly nominated by the County Assembly;
(f) the Deputy Clerk of the County Assembly;
(g) the Principal Finance Officer;
(h) the Principal Legal Counsel;
(i) the Clerk of the County Assembly as an ex-officio member and secretary to the Committee.

8. The Fund Management Committee shall, on behalf of the Board, manage the Fund and as such shall—
(a) approve applications recommended for loans by the relevant sub committees in accordance with the existing terms and conditions of borrowing prescribed by the Board;
(b) if required liaise with a housing institution to set up a revolving fund for the disbursement of the loans;
(c) enter into agreement with persons or legal entities for the purposes of providing services to the Fund;
(d) oversee the administration of the Fund;
(e) establish management guidelines to assist the Management Committee and the officer administering the Fund in the management and administration of the Fund; and
(f) carry out other duties as may be directed by the Executive Committee Member for Finance for the proper management of the Fund.

9. (1) There is established an Assembly Members sub-committee of the Management Committee consisting of—
(a) the vice-chairperson of the Board who shall be the chairperson;

(b) the Majority Whip of the County Assembly; and

(c) the Minority Whip of the County Assembly;

(d) two Members of the Assembly nominated by the County Assembly one of whom shall be the secretary.

(2) There is established a Staff sub-committee of the Management Committee consisting of—

(a) the Deputy Clerk who shall be chairperson;

(b) Principal Sergeant at Arms;

(c) Principal Clerk;

(d) Principal Legal Counsel;

(e) Principal Human Resource Officer who shall be the Secretary.

10. The sub-committees established under section 9 shall respectively, consider and process applications for loans from the members and staff of the Assembly in accordance with the existing terms and conditions of borrowing and recommend to the Management Committee for approval of the loans.

11. (1) A member or staff of the Assembly who wishes to apply for a loan from the Fund shall make an application in such manner 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 relevant sub-committee for consideration.

(3) The relevant sub-committee shall consider and process the application and recommend to the Management Committee for approval of the loans.

(4) If the Management Committee approves the application, the applicant shall enter into a loan agreement in a form that the committee may prescribe.

(5) If the Management Committee declines to approve an application for loan the Committee shall, within seven days, notify the applicant giving reasons as to why the application has been declined.

12. All loans approved under these Regulations shall be released from the Fund to the borrower in such manner, taking account the security of the funds as may be prescribed by the Management Committee.

PART III—PROVISIONS RELATING TO MORTGAGE SCHEME

13 (1) An application for a mortgage 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 authority of the area in which 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 or developed; and
(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 an applicant fails to comply with the requirements of sub-regulation (2) within the stipulated time, the officer administering the Fund shall, upon giving the applicant fourteen days' notice, deduct the amount due from the salary of that applicant in such installments as may be appropriate and remit the deductions to meet the costs as may be due.

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

15. (1) The maximum loan to be granted to a member of the Assembly under these Regulations shall be a sum equivalent to the member’s net emoluments at the time of the application multiplied by the number of months remaining for the life of that County Assembly.

(2) A member of the Assembly shall be required to give prior authority in writing for pension and gratuity dues to be utilized to clear any outstanding debt in case the member loses his or her seat before fully repaying the loan or if he or she is unable to fully repay the loan by the end of the term of the Assembly.

(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 Vihiga; and
(b) eighty per centum of the value of the property, 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 Assembly shall be eligible for the maximum amount of the loan specified under sub-regulation (1) in each term of the Assembly to be accessed by the member in a maximum of two disbursements in that term

16. (1) The maximum loan to be granted to a member of the staff under these Regulations shall be guided by the thresholds set out by the Salaries and Remuneration Commission

(2) A member of staff 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 such a staff is unable to fully repay the loan by the end of his or her contract or service

(3) Subject to this regulation, a member of staff shall be eligible for the maximum amount of loan specified under sub-regulation (1) subjected to a maximum of three disbursements depending on the availability of funds and his or her financial ability to repay the loan.

17. (1) 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.

(2) A loan for the development of residential property may be granted, at the discretion of the Management Committee—
(a) to a member or staff of the Assembly who is in possession of a title deed in his or her name or to a spouse of the holder of the title deed if a genuine marriage certificate is attached to the application; or

(b) in a single installment to cover both purchase of the land and subsequent development of the property provided that the relevant sale agreement and bills of quantities are in place.

(3) Purchase of land under sub-regulation (2) paragraph (b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

18. (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 charge an interest of not more than one per centum above the interest chargeable under sub-regulation (1) of this regulation, shall be used to defray the administrative expenses of the Fund.

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

19. A loan granted under these Regulations shall be fully repaid in case of —

(a) the Assembly, at the end of the term of that Assembly;

(b) staff, at the end the contract or service of the member of staff.

20. (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 that 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 after exhausting all other options that the borrower may have to service the mortgage.

(4) No borrower shall be eligible for more than one mortgage loan at a time from the Fund.

(5) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

21. (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 the 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.

22. 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
23. Notwithstanding any provisions of these Regulations, the Board may, if it considers it appropriate to do so, appoint a mortgage institution to administer the mortgage scheme on its behalf.

24. The responsibilities of the mortgage institution appointed under these Regulations, if any, 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 the borrower’s account after the necessary documentation is completed by the Committee;

(d) to pay all outgoings and issue demand notices where necessary to members of the scheme 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 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 after exhausting all avenues to recover the loan.

PART IV—PROVISIONS RELATING TO CAR LOANS SCHEME

25. The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the Vihiga County Assembly Service Board 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.

26. (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 only for purposes of renewal by that member of the necessary licences.

(2) A log-book released under sub-regulation (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 and notify the Chairperson of the staff Committee.

27. (1) The car loan amount that a member of the Scheme may receive shall be in line with the thresholds set out by Salaries and Remuneration Commission.

(2) No member of the Scheme shall receive a loan of which the repayment shall result in salary deductions exceeding one third of the monthly emoluments of the member of the Scheme.

28. A car loan advanced under these Regulations shall be repaid in full over a maximum period of five years irrespective of whether the vehicle purchased is new or used.

29. (1) A loan granted to a member of the Scheme under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance for the duration of the loan.
(2) The interest charged under sub-regulation (1) shall be utilized to defray the administrative expenses of the Fund.

30. (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 an approved limit, 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 sub regulation (2) may apply to the Fund for a loan which shall be repaid within a period of one 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 thereof shall be debited to the account of the member of the Fund.

31. (1) Upon full repayment of the loan, a signed loan discharge certificate in a form prescribed by the Management Committee shall be issued to the borrower and a copy shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge certificate shall release to the borrower 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 25.

PART V—MISCELLANEOUS PROVISIONS

32. 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.

33. Subject to these Regulations, the Board may, in consultation with the Management Committee 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.

34. (1) The Officer Administering the Fund shall—

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

(b) in consultation with the Management Committee impose any reasonable restriction or other requirement concerning the use of funds under the Fund;

(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 months after the end thereof, a statement of accounts relating to the Fund; and

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

(2) Every statement of accounts prepared under this regulation shall specify the income of the Fund and show the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act;

(3) 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 financial year concerned.

Made on the 18th, December, 2015

MOSES LUVISIA.

County Executive Committee Member for Finance and Planning.