

12th February, 2015

LEGAL NOTICE No. 15

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

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury makes the following Regulations -

THE PUBLIC FINANCE MANAGEMENT (STRATEGIC FOOD RESERVE TRUST FUND)
REGULATIONS, 2015

Citation.

1. These Regulations may be cited as the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations, 2015.

Interpretation.

2. In this Regulations, unless the context otherwise requires-

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"Accounting Officer" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

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"Accounting Standards Board" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

"administrator of the Fund" means a person designated by the Cabinet Secretary as the administrator of the Fund under paragraph 12;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

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

"Fund" means the Strategic Food Reserve Fund established under regulation 3;

"Oversight Board" means the Strategic Food Reserve Oversight Board established under paragraph 7;

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"Revenue" has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012; and

"Strategic Food Reserve" includes maize, beans, rice, fish, powdered milk and canned beef.

Establishment of the Fund.

3. (1) There is established a fund to be known as the Strategic Food Reserve Trust Fund.

(2) The Fund shall consist of-

(a) monies appropriated by Parliament for purposes of the Fund;

(b) grants, donations, bequests or other gifts made to the Fund;

- (c) income generated from the proceeds of the Fund; and
- (d) monies from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

4. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual approved budget estimates by the Oversight Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Oversight Board for approval.

Object and purpose of the Fund.

5. (1) The object and purpose for which the Fund is established is to provide a Strategic Food Reserve in physical stock and cash equivalent and specifically the Fund shall-

- (a) stabilize the food supply and prices in the country;
- (b) arrange for procurement, storage and sale of food commodities;
- (c) maintain adequate strategic food reserves in physical stock or cash equivalent at any one given time; and
- (d) mobilize resources to support strategic food reserve related activities.

Capital of the Fund.

6. The initial capital of the Fund shall be two billion and two hundred million shillings appropriated by Parliament in the financial year 2014/2015 and additional capital of the fund shall be made in the subsequent financial years' budgets.

Establishment of the Board.

7. (1) There is established a board to be known as the Strategic Food Reserve Oversight Board.

(2) The Oversight Board shall consist of-

- (a) a chairperson appointed by the President, who shall be a person with competence in finance matters;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to agriculture or his or her representative;
- (c) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative;
- (d) the Principal Secretary of the Ministry for the time being responsible for matters relating to interior and coordination of national government or his or her representative;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to devolution or his or her representative;
- (f) four other members appointed by the Cabinet Secretary through a competitive process taking into

account Article 27 of the Constitution, of whom-

(i) two shall be nominated by the registered nongovernmental organization involved in food security in the country; and

(ii) two shall be persons qualified and competent in the field of finance, accounting, management or marketing.

(g) the administrator of the Fund who shall be *ex-officio* and the secretary to the Oversight Board.

Functions of the Oversight Board.

8. The Oversight Board shall-

(a) formulate policies and guidelines for the regulation and management of the Fund;

(b) ensure strategic food reserves at any given time shall be rotated on a first in first out principle as well as timely manner to minimize quality deterioration and in any event shall not be held for a period exceeding two years;

(c) solicit for funds and other assistance to promote the object for which the Fund is established;

(d) approve estimates of revenue and expenditure of the Fund before submission to the Cabinet Secretary responsible for matters relating to agriculture;

(e) monitor grain market prices;

(f) ensure food quality standards along the Strategic Food Reserve supply chain;

(g) determine optimal Strategic Food Reserve stocks;

(h) liaise with counties to ensure they are food secure;

(i) approve annual work programmes and procurement plans for the Fund;

(j) determine the amounts of money payable for the purposes of the Fund and formulate the conditions for disbursement;

(k) receive any gifts, donations, grants or endowments made to the Fund; and

(l) perform any other functions that are ancillary to the object and purpose for which the Fund is established.

Conduct of business of the Oversight Board.

9. The conduct and regulation of the business and affairs of the Oversight Board shall be as provided in the Schedule.

Retention of receipts.

10. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for use for the purpose for which the Fund is established.

Application of Government Regulations and procedures.

11. Subject to the provisions of the Act, existing Government Regulations and Procedures shall apply in the administration of the Fund.

Administration of the Fund.

12. (1) The accounting officer of the State Department for the time being responsible for the matters relating to agriculture is designated under these Regulations as the administrator of the Fund.

(2) The administrator of the Fund shall-

(a) open and operate a bank account at the Central Bank of Kenya or a bank to be approved by the National Treasury, into which all monies raised under Fund shall be paid;

(b) operate and maintain the bank account in the manner as may be prescribed by the National Treasury, from time to time;

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

(d) consult with the Cabinet Secretary for the State Department responsible for matters relating to agriculture and the Oversight Board on matters relating to the administration of the Fund;

(e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;

(e) 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 submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;

(f) 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 submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;

(g) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2003; and

(h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettelement by the 21st of every fourth month.

(2) Every statement of account shall include details of the balance 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.

Expense of the Oversight Board.

13. The expenses of the Oversight Board shall be met out of funds provided by Parliament for that purpose and shall not exceed five (5) per cent of the annual approved budget.

Withdrawal of funds from the Fund.

14. (1) All withdrawals from the Fund shall be authorized by the Oversight Board as reflected in the approved annual estimates of expenditure for that financial year.

(2) The authorization by the Oversight Board of a withdrawal from the Fund, together with written Oversight Board resolution authorizing the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Fund Account in accordance with the authorization and instructions given.

(3) All payments made from Fund for the purposes of the Strategic Food Reserve shall be on the basis of the approved annual estimates of expenditure.

Offence and penalty.

15. Any person who misappropriates any funds or assets from the offence Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not less than five years or to a fine not exceeding ten million shillings, or to both.

16. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to agriculture.

SCHEDULE (r.9)

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE OVERSIGHT BOARD

Tenure of office.

1. Members of the Oversight Board, including the chairperson, shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for a further one term of three years.

Vacation of office.

2. A member of the Oversight Board, other than ex-officio member, may-

(a) at any time resign from office by notice in writing to Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary, if member-

(i) has been absent from three consecutive meetings of the Oversight Board without permission from the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(v) is incapacitated by prolonged physical or mental illness; or

(vi) is otherwise unable or unfit to discharge his functions.

Meetings of the Board.

3. (1) The Oversight Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.

(2) Unless three quarters of the total members of the Oversight Board otherwise agree, at least fourteen days written notice of every meeting of the Oversight Board shall be given to every member of the Board.

(3) The quorum for the conduct of the business of the Oversight Board shall be five members excluding the Secretary, of whom the majority shall be from amongst the non *ex-officio* members.

(4) The chairperson shall preside at every meeting of the Oversight Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted there at, have all the powers of the chairperson.

(5) Unless a unanimous decision is reached a decision on any matter before the Oversight Board shall be reached by consensus.

(6) Subject to subparagraph (3), no proceedings of the Oversight Board shall be invalid by reason only of a vacancy among the members thereof.

(7) Subject to the provisions of this Schedule, the Oversight Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

Disclosure of Interest.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Oversight Board and is present at a meeting of the Oversight Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Oversight Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Minutes.

5. The Oversight Board shall cause minutes of all proceedings of its meetings to be entered in books for that purpose.

Dated the 2nd February, 2015.

HENRY ROTICH,
Cabinet Secretary to the National Treasury