

**LEGAL NOTICE .NO ....**

**PUBLIC FINANCE MANAGEMENT ACT**

**(No. 18 of 2012)**

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

**THE PUBLIC FINANCE MANAGEMENT (TOBACCO CONTROL FUND)  
REGULATIONS, 2020**

**PART I-PRELIMINARY**

Citation.	1. These Regulations may be cited as the Public Finance Management (Tobacco Control Fund) Regulations, 2020.
Interpretation.	2. In these Regulations, unless the context otherwise requires-
No. 18 of 2012.	<p>“Act” means the Public Finance Management Act</p> <p>“Accounting Officer” has the same meaning as provided for in the Public Financial Management Act, 2012;</p> <p>“Accounting Standards Board” has the meaning assigned to it under Section 2 of the Public Financial Management Act, 2012</p> <p>“Administrator of the Fund” means a person designated as such under regulation 9;</p>

	<p>“Board,” means the Tobacco Control Board established under section 5 of Tobacco Control Act.</p>
	<p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Finance;</p>
	<p>“Fund” means the Tobacco Control Fund established under Regulation 3</p>
	<p>“Government Implementing Agency” means a government agency established by legislation and whose mandate extends to the promotion of objects and purpose of this Fund.</p>
	<p><b>PART II-ESTABLISHMENT OF THE FUND</b></p>
Tobacco Control Fund	<p>3. There is established a fund to be known as the Tobacco Control Fund.</p>
Sources of the Fund	<p>4. The Fund shall consist of—</p> <ul style="list-style-type: none"> <li>a) such sums as may be appropriated by Parliament for that purpose;</li> <li>b) such sums as may be realized from property forfeited to the Government under section 52 of the Tobacco Control Act, 2007;</li> <li>c) sums received, including fees, contributions, gifts or grants from or by way of testamentary bequest by any person or persons:</li> </ul> <p style="padding-left: 40px;">Provided that such sums may not be received from any person that would create a conflict of interest;</p> <ul style="list-style-type: none"> <li>d) income generated from the proceeds of the Fund;</li> <li>e) all other sums which may in any manner become payable to, or vested in, the Fund;</li> <li>f) solatium compensatory contribution payable by any licensed cigarette manufacturers or importers in the country as provided for under the Tobacco Control Act, 2007.</li> </ul>

Expenditure on the Fund.	<p>5. (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.</p> <p>(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.</p> <p>(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval</p> <p>(4) The monies under this Fund shall be disbursed to the eligible person under regulation 13.</p>
Objects and purpose of the Fund. 7(4)	<p>6. (1) The objects and purpose of the Fund is to provide resources for</p> <ul style="list-style-type: none"> <li>i. research, documentation and dissemination of information on tobacco and tobacco products;</li> <li>ii. promoting national cessation and rehabilitation programs; and</li> <li>iii. Tobacco Control Board Programmes</li> <li>iv. any other matter incidental to the matters stated in paragraphs above.</li> </ul>
Capital of the Fund.	<p>7. The initial capital of the Fund shall be Twenty Million (20) Kenya Shillings as appropriated by Parliament in the financial year 2021/2022.</p>
<b>PART III-MANAGEMENT OF THE FUND</b>	
Functions of the Board	<p>8 (1) The Board shall:</p> <ul style="list-style-type: none"> <li>i. provide overall oversight of the administration and management of the Fund;</li> </ul>

	<ul style="list-style-type: none"> <li>ii. advise the Cabinet Secretary for Health on any matter relating to the administration and management or any other matter on the Fund.</li> <li>iii. approve the ceilings for funding under each objective in each financial year;</li> <li>iv. develop policy guidelines relating to disbursements by the Fund;</li> <li>v. prescribe other guidelines for the administration of the Fund;</li> <li>vi. review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary responsible for Health for approval and submission to the Cabinet Secretary responsible for Finance;</li> <li>vii. review guidelines on the fund priorities and criteria for allocation and disbursement of funds to implementing agencies in furtherance of the objects of the Fund;</li> <li>viii. monitor and evaluate the programmes and activities under the Fund;</li> <li>ix. facilitate and develop sectoral linkages to the Fund;</li> <li>x. review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;</li> <li>xi. review and approve the financial statements of the Fund before submission to the Auditor General;</li> <li>xii. review policy on the management of assets, equipment and all properties under the Fund;</li> <li>xiii. receive reports on the performance of the Fund; and</li> <li>xiv. any other activity that in the opinion of the Board, will promote and facilitate the realization of the objects and purposes of the Fund.</li> </ul> <p>(2) The Board shall prepare and submit a quarterly report to the Cabinet Secretary on the performance of the Fund with copies to the Cabinet Secretary responsible for health.</p> <p>(3) The Cabinet Secretary shall prepare and submit a quarterly report to the Cabinet on the performance of the Fund.</p>
Administration of Fund	<p>9. (1) The administrator of the Fund shall be the accounting officer responsible for matters relating to health or any other person designated by the Cabinet Secretary, in writing, for that purpose.</p>

	<p>(2) The Administrator of the Fund shall —</p> <ul style="list-style-type: none"><li>(a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury in accordance with the Act;</li><li>(b) supervise and control the administration of the Fund in consultation with the Board.</li><li>(c) consult with the Board on matters relating to the administration of the Fund;</li><li>(d) With the approval of the Board, disseminate funds for the achievement of the purpose of the Fund</li><li>(e) cause to be kept proper books of accounts and other books and records relating to all activities and undertakings financed from the Fund;</li><li>(f) prepare, sign and transmit to the Auditor-General, upon the approval by the Board, 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 Accounting Standards Board shall prescribe in accordance with the provisions of the Public Finance Management Act (No. 18 of 2012) and Public Audit Act (No. 34 of 2015);</li><li>(g) furnish additional information to the Auditor-General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015 (No. 34 of 2015);</li></ul>
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	<p>(h) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Public Finance Management Act, 2012 (No. 18 of 2012), and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and the Controller of Budget; and</p> <p>(i) be the custodian of all the assets, equipment and properties under the Fund.</p> <p>(3) 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 quarter concerned.</p>
Secretariat	<p>10. (1) There shall be a secretariat of the Fund which shall consist of a Chief Executive Officer and such other staff as are necessary for the proper discharge of the functions of the Fund.</p> <p>(2) The Chief Executive Officer and other staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.</p> <p>(3) The Chief Executive Officer shall, subject to the direction of the Administrator, be responsible for the day-to-day running of the affairs of the Fund.</p> <p>(4) Parliament shall appropriate administration expenses not exceeding three percent of the annual budgetary allocations of the Fund.</p>
Disclosure of Interest	<p>11. (1) Any person appointed as a member to any of the management organs under the fund shall have no direct or indirect interest in tobacco industry and its affiliates</p> <p>(2) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a</p>

	<p>meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he 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 of, or vote on, any questions 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 such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.</p> <p>(3) A Public Officer having made such disclosure under 9(a) and (b) shall be subject to Section 12 of the Public Officer Ethics Act , 2003, not under any circumstances-</p> <ul style="list-style-type: none"> <li>(a) be present during any interactions between the public authority and the tobacco industry;</li> <li>(b) be part of the decision making of the public authority relating to the tobacco industry;</li> <li>(c) be present during the deliberations of any public authority for making of that determination; and</li> <li>(d) Influence directly or indirectly any other member, or decision making of the Public authority.</li> </ul> <p>(4) A person who contravenes this Regulation commits an offence</p>
Meetings of the Board in relation to the Fund	12. The Board shall meet not less than four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

<p>Funding Eligibility Criteria</p>	<p>13.(1) An organization or government implementing agency shall be eligible to apply for funding from the Fund if —</p> <p>(a) in the case of a government implementing agency if the agency –</p> <ul style="list-style-type: none"> <li>i. Has an annual work program aligned to the strategic plan of the Fund</li> <li>ii. Meets any other criteria prescribed by the Board.</li> </ul> <p>(b) in the case of a Non-State Actor if the organization —</p> <ul style="list-style-type: none"> <li>i. Is duly registered in Kenya under the relevant law</li> <li>ii. Is compliant with laws of Kenya</li> <li>iii. Has its financial statements audited for the last 3years</li> <li>iv. Has an annual work program aligned to the strategic plan of the Fund</li> <li>v. Meets any other criteria prescribed by the Board.</li> </ul> <p>(2) The Fund shall apply to persons who deal with;</p> <ul style="list-style-type: none"> <li>i) research, documentation and dissemination of information on tobacco and tobacco products;</li> <li>ii) promoting national cessation and rehabilitation programs</li> <li>iii) tobacco, tobacco products and any other tobacco related products enforcement</li> <li>iv) impact of tobacco use</li> <li>v) impact of tobacco growing and</li> <li>vi) any other connected purposes.</li> </ul> <p>(3) Despite the provisions of paragraph (2) above, the Fund shall not be eligible to tobacco manufacturers, distributors, importers, growers and their associations or any entity representing them, tobacco industry lobbyists or persons working to further the agenda of tobacco industry.</p>
<p>Cost of Administration</p>	<p>14. (1) A maximum of 3 percent of the Annual Budget of the Fund shall be allocated for administration purposes.</p>

	<p>(2) The monies under this Fund may be disbursed to defray the expenses in respect of the administration of the Fund.</p> <p>(3) Monies under this Fund shall be disbursed to Tobacco Control Board as prescribed by the Cabinet Secretary for Health.</p>
Investment of Funds	15. The administrator may, with the approval of the Board, invest any of the monies of the Fund which are not immediately required for its purposes in accordance with the provisions of the PFM Act 2012.
Retention of receipts.	16. 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.	17. Subject to the provisions of the Act, existing Government Regulations and Procedures shall apply in the administration of the Fund.
Offences	18. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the Funds otherwise than in a manner provided in these Regulations commits an offence.
Winding up of the Fund	<p>19. (1) The winding up of the Fund shall be in accordance with the provisions of the Act and the Regulations made on winding up of the Fund.</p> <p>(2) The Administrator shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government.</p> <p>(3) The Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly.</p> <p>(4) Assets other than cash of the Fund shall be transferred to the accounting officer responsible for matters relating to Environment and Forestry.</p>

	(5) The Cabinet Secretary shall submit a final statement of accounts to National Assembly and to the Auditor-General for audit within six months from the date of the decision to wind up the Fund.
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*Dated.....the Day of....., 2020*

**Hon. Amb. Ukur Yatani, EGH,**  
**CABINET SECRETARY, THE NATIONAL TREASURY AND PLANNING.**

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