LEGAL NOTICE NO. 6

THE PUBLIC FINANCE MANAGEMENT (KAKAMEGA COUNTY GOVERNMENT CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS, 2016

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

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

THE PUBLIC FINANCE MANAGEMENT (KAKAMEGA COUNTY GOVERNMENT CAR LOAN AND MORTGAGE SCHEME FUND) REGULATION, 2016.

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Kakamega County Government Car Loan and Mortgage Scheme Fund Regulations, 2016.

Interpretation

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

“assembly” means the County Assembly of Kakamega;

“board” means the Kakamega County Public Service Board established under section 56 of the County Governments Act;

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

“commission” means the Salaries and Remuneration Commission;

“committee” means the Advisory Committee of the Fund established under regulation 6;

“county” means Kakamega County;

“equity” means the release of a loan that allows the home owner to access equity in his or her home without having to sell it for purposes of improving it.

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

“fund” means the Kakamega County Government Car Loan and Mortgage Scheme Fund established under section 116 of the Public Finance Management Act 2012;

“member of the scheme” means staff of the County government of Kakamega including Members of the County Assembly.

“mortgage finance company” has the meaning assigned to it under section 2 of the Banking Act.

“tenant purchase institution” means a company incorporated in Kenya which has not less than ten years’ experience in operation of tenant purchase scheme for not less than one thousand housing units at one moment.

“valuer” means a person registered as a valuer under the Valuers Act.
Establishment of the Fund

3. There is established a Fund to be known as the Kakamega County Government Car Loan and 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, construction or development of a residential property and for the purchase of private cars by members of the Scheme.

Sources of Monies

5. (1) The initial source of monies for the Fund shall consist of money appropriated by the County Assembly and such other monies as may be voted for the purposes of the Fund in subsequent financial years.

   (2) All monies otherwise paid into the account held by the Fund; and

   (3) The interest accruing into the account held by the Fund.

PART III—ADMINISTRATION OF THE FUND

Establishment of the Administration Committee

6. (1) There is established the Administration Committee of the Fund which shall consist of—

   (a) The County Secretary who shall be the chairperson;

   (b) Chief Officer responsible for Public Service and Administration who shall be the Secretary;

   (c) The Clerk of the Assembly;

   (d) Chief Officer Treasury;

   (e) The County Attorney;

   (f) Chief Officer responsible for Housing;

   (g) Chief Officer responsible for Transport; and

   (g) One representatives each from the County Public Service Board and County Assembly Service Board respectively.

Functions of the Committee

7. (1) The functions of the Administration Committee of the Fund shall be to—

   (a) receive and process applications for granting of loans to members of the scheme;

   (b) approve housing development and financing proposals;

   (c) approve criteria for the beneficiaries of the Fund;

   (d) designate a bank, financial institution or mortgage finance company to act as a financial agent of the scheme and the institution so designated shall be subject to the terms and conditions of any agreement for the purpose;
(e) co-opt persons with relevant expertise to the Committee;

(f) keeping and maintaining records of loan applicants; and

(g) perform such other duties as may be necessary for the proper management of the Fund.

**Powers of the Committee**

8. The Committee shall have all the powers necessary for the proper performance of its functions under these regulations and in particular but without prejudice to the generality of the foregoing the committee shall have powers to—

(a) to appoint a financial institution to manage the Fund on its behalf;

(b) to reject or return application forms that do not meet requirements;

(c) to receive and review reports from the fund manager and make recommendations to the Executive Committee member;

(d) to create a secretariat to ensure efficient running of its activities; and

(e) enter into associations with such other persons, bodies or organisations as the committee may consider appropriate in furtherance of the objects of these regulations.

**Meetings**

9. (1) The Committee shall meet at least four times in a year.

   (2) The quorum of a meeting of the committee shall be the chair present and four other members.

   (3) The chairperson shall convene and preside at all meetings of the committee.

   (4) The decision of the committee shall be by a simple majority and in case of a tie the chairperson shall have a casting vote.

**Allowances**

10. The committee may be paid such allowances as shall be determined by the Executive Committee in line with the guidelines of the Salaries and Remuneration Commission.

**Administration of the Fund**

11. (1) The Committee shall—

(a) open and manage bank account for the Fund;

(b) supervise and control the administration of 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 (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by it specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the County treasury 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.

(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.

**Fund Manager**

12. Where the committee approves the appointment of a bank, financial institution or mortgage finance company to manage the Fund, the institution shall—

(a) operate individual accounts for each borrower and provide details of recoveries of the loan;

(b) 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) disburse cheques or transfer funds for newly approved loans to borrowers after the necessary documentation is completed by the committee;

(d) upon repayment of the loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the borrower;

(e) pay all outgoing and issue demand notices to defaulting borrowers through the administrator the Fund; and

(f) perform such other duties as may be assigned to it from time to time by the committee;

**PART IV—APPLICATION AND GRANT OF LOANS**

**Criteria for loan application**

13. (1) A person wishing to apply for a loan under this scheme shall be an employee of the county government.

(2) A qualifying member who wishes to apply for a loan from the Fund shall make such application to the chairperson of the Administration Committee of the Fund in such a manner as the committee may prescribe.

**Grant of loans**

14. (1) A loan granted under these regulations shall be utilized for the purchase, construction or development of a residential property for the occupation of the borrower or equity release for improvement of the residential house or for the purchase of a private motor vehicle for the use of the borrower.

(2) The loan in paragraph (1), if a mortgage, shall be granted to a qualifying person who is in possession of—

(a) title deed to the land on which the development is intended to be carried out; or

(b) ownership documents that are certified as authentic by the County Executive Committee Member responsible for Lands, Physical Planning and Housing.

(3) In case an applicant for a loan is not eligible under paragraph (2) the applicant shall be entitled to a first instalment of forty percent of the maximum loan amount of which the member is eligible for the purchase of the land on which the residential house
is to be developed or constructed and a subsequent instalment for the construction or development of the residential house after the member has complied with regulation 13.

**Loan application**

15. (1) An application for a loan for construction or development of a residential house shall be accompanied by the following documents where applicable—

(a) copies of the designs of the proposed residential property duly approved by County Authority;

(b) bills of quantity in respect of the proposed development;

(c) an official search of the title to the property intended to be purchased;

(d) a certified copy of the sale agreement relating to the property;

(e) National Environment Management approval, if applicable; and

(f) any other document that the committee may require for the purpose of assessing the application.

(2) An application for a car Loan shall be accompanied by a sale agreement or an offer letter from the seller or dealer and a copy of the borrower’s driver’s license.

(3) The borrower shall bear the costs of stamp duty, transfer fees, legal fees as negotiated by the committee under the Advocates Remuneration Order and other related charges.

(4) The committee may where it deems appropriate, recommend the appointment of an advocate to act on its behalf in respect of transactions relating to the property under these regulations.

**Leased property**

16. (1) Where the property intended to be purchased through a loan from the fund is leasehold property; such loan shall be granted where expiry date of such lease is at least forty-five years from the date the loan is granted.

(2) Where the property intended to be purchased through a loan from the Fund is a motor vehicle, such loan shall be granted where the vehicle is not more than eight years old from the date of manufacture.

**Maximum loan**

17. The maximum loan to be granted under these regulations to a qualifying member shall be as prescribed in First Schedule and as revised by the Commission from time to time.

**Repayment of Loan**

18. (1) A loan granted under these regulations shall be fully repaid at the end of twenty years for a mortgage and five years for a car loan or as shall be prescribed by the Commission from time to time.

(2) The loan granted under these regulations shall attract an interest of three per centum (3%) per annum on reducing balance or such other rate as may be advised by the Commission from time to time.
Lien

19. (1) The Fund shall register a charge on any property financed through a loan under these regulations and such charge shall impose an obligation on the chargee or borrower.

(2) A motor vehicle purchased under this scheme shall be jointly registered the names of the Fund and the borrower and the log book shall be retained by the Fund until any outstanding loan is repaid in full.

(3) 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 in case of land or sell, agree to sell, lease or part with possession of a motor vehicle purchased under this scheme without the prior written consent of the committee and until the loan is repaid in full;
   (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 committee; and
   (c) provide a transfer deed duly signed by the borrower and a letter authorizing the committee to sell the property in case of default in payment.

(4) During the loan repayment period, every borrower shall in case of land—
   (a) ensure that the land is used for construction of residential property only;
   (b) the property in a satisfactory state of repair; and
   (c) not alter or make any structural alteration to the property without prior consent from the committee.

Insurance

20. (1) A borrower shall take out and maintain comprehensive insurance cover in case of a motor vehicle or mortgage protection policy and a fire policy with an insurance firm approved by the committee, the cost of which shall be paid out of the Fund and debited on 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 committee.

Default in repayment

21. (1) Where a borrower defaults in repayment of the loan for a period of three consecutive months the committee shall issue one month notice in writing for the borrower to pay the money owing failure to which the committee shall repossess and sell the property.

(2) Where a borrower ceases to be a member of the scheme before the loan is repaid in full the committee shall allow the borrower to continue to repay the loan on the same terms as set out in these regulations provided that when the borrower defaults in a period of four months the outstanding loan shall revert to prevailing commercial interest rate.

(3) Notwithstanding these regulations, where a borrower leaves employment on disciplinary grounds or resigns before serving for the contract period, the borrower shall
either repay the outstanding loan within a maximum period of four months or repay the outstanding loan beyond the four months at the prevailing market interest rate.

(4) Where the commercial rate is applicable and the borrower is in default for a period of four months, the committee may call in the loan and sell the charged property by public auction or private treaty.

**Protection of government interest**

22. The Committee shall be entitled to do anything lawful and necessary to protect the government’s interest in the property in respect of which a loan is granted.

**Prohibition on sale or transfer of loaned property**

23. No person shall sell or in any way transfer any property acquired through the Fund under these regulations unless the final repayment of the full loan advanced by the fund together with such interest and incidentals as may be due is made.

**Partnerships**

24. The Administration Committee may enter into a viable management partnership with a scheme from any other public body.

**Management costs**

25. The Fund or where applicable, the bank, financial institution or mortgage finance company referred to under regulation 12, may charge an interest as negotiated with the Administration Committee on reducing balance of the loan granted to individual applicants to cover its management costs.

**Miscellaneous**

26. These regulations shall be supplemented by such requirements as may be detailed in the loan application form supplied by the Fund or the manager and by the contract between the Fund or manager and the borrower.

**Amendments**

27. The Committee may from time to time recommend to Executive Committee Member any amendment to these regulations.

**Winding up of the Fund**

28. The Executive Committee Member may wind up the fund with the approval of the County Assembly and upon winding up—

(a) The Administrator of the fund shall ensure payment of any amount remaining in the fund into the County exchequer account;

(b) The Executive Committee Member shall with the approval of the County Assembly pay any deficit in the fund from the exchequer account;

(c) All assets of the fund will be absorbed into the County.
**FIRST SCHEDULE** (Reg. 17)

<table>
<thead>
<tr>
<th>Beneficiaries</th>
<th>Car Loan</th>
<th>Mortgage Scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Governor</td>
<td>Up to KSh.10 Million</td>
<td>Up to KSh.40 Million</td>
</tr>
<tr>
<td>County Deputy Governor</td>
<td>Up to KSh.5 Million</td>
<td>Up to KSh.25 Million</td>
</tr>
<tr>
<td>Civil Service grades S,T,U and equivalent grades in the Public Service</td>
<td>Up to KSh.4 Million</td>
<td>Up to KSh.20 Million</td>
</tr>
<tr>
<td>Civil Service grades P,Q,R, and equivalent grades in the Public Service</td>
<td>Up to KSh.3 Million</td>
<td>Up to KSh.15 Million</td>
</tr>
<tr>
<td>Civil Service grades K,L,M,N and equivalent grades in the Public Service</td>
<td>Up to KSh.1.5 Million</td>
<td>Up to KSh.10 Million</td>
</tr>
<tr>
<td>Civil Service grades G,H,J and equivalent grades in the Public Service</td>
<td>Up to KSh.800,000</td>
<td>Up to KSh.6 Million</td>
</tr>
<tr>
<td>Civil Service grades A,B,C,D,E,F and equivalent grades in the Public Service</td>
<td>Up to KSh.600,000</td>
<td>Up to KSh.4 Million</td>
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</tbody>
</table>

Made on the 31st October, 2016

GEOFFREY OMULAYI,
County Executive Committee Member, Treasury.