LEGAL NOTICE No. 5
THE PUBLIC FINANCE MANAGEMENT ACT
(No.18 of 2012)
THE PUBLIC FINANCE MANAGEMENT ACT (KAKAMEGA COUNTY
SUGARCANE DEVELOPMENT FUND) REGULATIONS, 2018
ARRANGEMENT OF REGULATIONS

Regulation

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

IN EXERCISE of the powers conferred by Section 116 of Public Finance Management Act, 2012, the Kakamega County Executive Committee Member for Finance makes the following regulations:

THE PUBLIC FINANCE MANAGEMENT (THE KAKAMEGA COUNTY SUGARCANE DEVELOPMENT FUND) REGULATIONS, 2018

PART I—PRELIMINARY

Citation
1. These regulations may be cited as the Public Finance Management (The Kakamega County Sugarcane Development Fund) Regulations, 2018.

Interpretation
2. In these regulations unless the context otherwise requires—
   “administrator” means Administrator of the Fund appointed under regulation 10;
   “Accounting Standards Board” means the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012;
   “county exchequer account” means the county revenue fund pursuant to Article 207 of the Constitution of Kenya, 2010;
   “county” means Kakamega County;
   “county assembly” means County Assembly of Kakamega County;
   “county government” means the County Government of Kakamega;
   “executive committee” means County Executive Committee pursuant to Article 179 of the Constitution of Kenya;
   “executive committee member” means the County Executive Committee Member for finance;
   “fund” means the Kakamega County Sugarcane Development Fund established under regulation 4;
   “funds manager” means Funds Manager appointed under regulation 13; and
   “implementing committee” means the Committee constituted under regulation 7.

Object of the Regulations
3. The object of these Regulations is to—
   (a) establish the Kakamega County Sugarcane Development Fund to provide funds to cushion sugarcane farmers against delayed payments by sugarcane millers within the county; and
   (b) provide incentives to farmers to continue investing in sugarcane farming.
4. Kakamega County Subsidiary Legislation, 2018

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the Fund

4. There is established a Fund known as Kakamega County Sugarcane Development Fund.

Establishment of the Fund

5. (1) There is established an Implementation Committee for the Fund.

(2) The Committee shall consist of—

(a) a chairperson who has the following qualifications—

(i) a relevant bachelor's degree or its equivalent from a university recognized in Kenya;

(ii) at least five years' experience in the sugar industry;

(iii) a professional background in management;

(b) the chief officer for agriculture;

(c) the chief officer for finance;

(d) county attorney;

(e) a representative of the farmers; and

(f) a representative of the sugarcane millers; and

(g) the county director of agriculture who shall be the Administrator of the Fund and secretary to the Implementing Committee.

(3) The chairperson and members under sub-regulation (2) (e) and (f) shall be appointed by the Executive Committee Member for agriculture and shall serve for a term of three years which may be renewed once upon satisfactory performance.

Functions of the Implementation Committee

6. (1) The Implementation Committee shall—

(a) receive records of all payments made to sugarcane farmers;

(b) maintain proper records of the Committee affairs and books of accounts;

(c) submit quarterly returns and reports of the Committee operations to the executive committee member responsible for Agriculture;

(d) be the custodians of all Committee assets and documentation;

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

(f) to prepare annual estimates and reports to the Executive Committee Member responsible for Agriculture;

(g) not later than three months after the end of each financial year, cause to be prepared financial statement of the Fund and submit the same to the Auditor General;

(h) ensure that the earnings of, or accruals to the Fund are retained in the Fund unless the Executive Committee Member directs otherwise;
(i) ensure that money held in the Fund, including any earnings or accruals is spent only for the purposes for which the Fund is established;

(j) develop guidelines as to how the farmers will benefit from the Fund and the applicable forms;

(k) monitor by receiving reports from the Fund manager on a monthly basis indicating details of the farmers paid, value of sugarcane delivered by each farmer and the money paid to such farmer by the sugarcane miller;

(l) assess the impact of the Fund to the sugarcane industry and report on its viability and the need for review;

(m) monitor by receiving reports from the Fund manager on a monthly basis indicating details of revolving funds; and

(n) perform such other functions as the Committee may deem necessary for the proper discharge of its mandate.

Removal of Committee members

7. The Executive Committee Member for Agriculture may remove from office a member of the Implementation Committee of the Fund under regulation 5 (2) (a), (e) and (f)—

(a) for gross misconduct or misbehavior;

(b) violation of the Constitution or any other law;

(c) inability to perform the functions of the office arising out of mental or physical incapacity;

(d) absence from three consecutive meetings of the committee without a reasonable explanation; or

(e) incompetence or negligence of duty.

Vacation of Office

8. There is a vacancy in the Implementation Committee if a member—

(a) resigns in writing;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of more than six months;

(c) declared bankrupt;

(d) is removed from office under regulation 7;

(e) is unable to perform the functions of their office by reason of mental or physical infirmity; or

(f) dies.

Filling of Vacancy

9. Where a vacancy occurs in the membership of the committee under regulation 8, the appointing authority shall appoint a new member in accordance with the provisions of these Regulations.
Administration of the Funds

10. (1) The Executive Committee Member shall designate the county director of agriculture to be the Administrator of the Fund.

(2) The Administrator shall be responsible for the running of the day to day activities of the Fund.

Functions of the Administration

11. The Fund Administrator shall—
   (a) prepare accounts for the Fund for each financial year;
   (b) not later than three months after the end of each financial year submit statements relating to the account to the Auditor-General;
   (c) prepare quarterly financial statements for the Fund on financial and non-financial performance of the Fund;
   (d) present financial statements of the Fund to the County Assembly;
   (e) not later than fifteen days after the end of each quarter submit the quarterly report to the county treasury and a copy to the controller of budget;
   (f) supervise and manage operations of the account;
   (g) ensure adequate budgetary provisions for the Fund; and
   (h) ensure the Fund balances are administered in accordance with the provisions of the Public Finance Management Act and that the Fund balances are re-budgeted at the end of the financial year.

Secretariat of the Fund

12. (1) The secretariat of the Implementation Committee shall be based at the department of agriculture or other relevant department within the county government.

(2) The officers appointed under sub-regulation (1) shall ensure proper management of records of the Fund.

Funds Manager

No. 33 of 2015

13. (1) The Implementation Committee shall appoint a funds manager in line with the Public Procurement and Disposal Act, 2015 to manage funds disbursed by the Committee.

(2) The funds manager shall have the following qualifications—
   (a) be a body corporate;
   (b) have technical capacity to manage funds;
   (c) have proven financial capacity and standing for a period of at least three years; and
   (d) have demonstrable capacity in supply and sales of sugar and or sugarcane related products for a period of three years.
Functions of the Funds Manager

14. The funds manager shall—
   (a) open a special account into which money disbursed by the Fund Administrator in accordance with the schedule provided by the miller will be received;
   (b) pay farmers for sugarcane delivered in accordance with the payment schedule provided by the miller within three days of receipt of the money;
   (c) sell sugar received from the miller equivalent to money disbursed to farmers and remit the proceeds to the Fund Administrator monthly;
   (d) submit to the Fund Administrator farmers’ payment schedules received from the miller on a weekly basis;
   (e) submit reports to the Fund Administrator for the amount of sugar supplied by the miller being equivalent to the amount paid as per the farmers payment schedule;
   (f) pay into the account held by the Fund Administrator the principal amounts received from the sugar sales net of agreed fees and submit reports of the sales and evidence of deposit to the Fund Administrator;
   (g) pay to the Fund Administrator any interest on the accrued disbursement as may be agreed with the Implementation Committee; and
   (h) submit monthly, quarterly and annual financial and non-financial reports to the Fund Administrator.

PART III—FINANCIAL PROVISIONS

Sources of monies for the Fund

15. (1) The sources of monies for the Fund shall include—
   (a) monies appropriated by the County Assembly for the purposes of the Fund;
   (b) revenue collected from the sale of sugar by the funds manager;
   (c) interest accruing from bank deposits in respect of the Fund;
   (d) donations, grants and endowments; and
   (e) monies from any source provided or donated or lent to the Fund.

   (2) Any unused monies at the end of the financial year shall not be paid to the county revenue account but shall be retained in the Fund and carried forward to the next financial year as provided for in section 116 (3) of the Public Finance Management Act.

   (3) Despite sub-regulation (2) any unused monies but already committed at the end of the financial year shall be retained in the Fund and shall not form part of the annual allocation for the Fund for the next financial year.

Expenditure of the Fund

16. (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the object for which the Fund is established.

   (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 Implementation Committee at the beginning of the financial year to which they relate.
(3) Any revision of the approved annual work programme and of any cost estimate shall be referred to the Implementation Committee for approval.

Annual Estimates

17. (1) At least three months before the commencement of each financial year the Implementation Committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year in accordance with the provisions of the Public Finance Management Act.

(2) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and in particular shall provide for—
   (a) payments of sugarcane farmers;
   (b) the operations of the Fund;
   (c) maintenance of assets of the Fund;
   (d) payment of allowances;
   (e) compensation for claims; and
   (f) such other matters as the Implementation Committee, in consultation with the Executive Committee, may determine.

(3) The annual estimates shall be approved by the Implementation Committee and shall be submitted to the Executive Committee Member for approval and after the Executive Committee Member has given approval the Implementation Committee shall not increase any sum provided in the estimates without the consent of the Executive Committee Member.

(4) No expenditure shall be incurred for the purposes of the Fund except with the funds voted or appropriated by County Assembly.

Accounts and Audit

18. (1) The Implementation Committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund.

(2) Within a period of three months after the end of each financial year, the Committee shall submit to the Auditor-General the accounts of the Fund in respect of that year together with—
   (a) a statement of income and expenditure of the Fund for that year; and
   (b) a statement of the assets and liabilities of the Fund for that financial year.

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(3) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act.

Compliance with prescribed Accounting Standards

19. The Implementation Committee shall ensure that 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.

Winding up of the Funds

20. (1) The Executive Committee Member may wind up the Fund with the approval of the County Assembly.
(2) Upon winding up of the Fund as provided under sub-regulation (1)—

(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; and

(c) all assets of the Fund shall be taken over by county government.

PART V — MISCELLANEOUS PROVISIONS

Meetings

21. (1) The Implementation Committee shall meet at least once every three months.

(2) Despite sub-regulation (1), the Administrator may request for a special meeting and the chairperson shall convene the meeting.

(3) The chairperson shall preside at every meeting and in the absence of the chairperson, the members present shall elect one of their member to preside.

(4) The Implementation Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Implementation Committee.

Allowances for members of the Implementation committee and other staff

22. Members of the Implementation Committee and other staff of the Fund shall be paid such allowances as may be determined by the Executive Committee in line with existing guidelines of the Salaries and Remuneration Commission.

Rules of Procedure

23. (1) The Implementation Committee shall regulate and make its own rules of procedure.

(2) To transact any business of the Implementation Committee at least any five members who shall include the Administrator must be present.

Protection against Personal Liability

24. No matter or anything done by a member of the Implementation Committee, employee or agent of the Fund shall, if the matter or thing is done in good faith for executing the functions, powers and duties of the Fund, render a member of the committee, employee or agent of the Fund personally liable to any action, claim or demand whatsoever.

Liability of the Fund for damages

25. The provisions of these Regulations shall not relieve the Fund of the liability to pay compensation or damages to any person for any injury to the person, the person's or any of the person's interest caused by the exercise of or any power conferred by these Regulations.

Made on the 13th June, 2018.

GEOFFREY OMULAYI,
Executive Committee Member for Finance.