LEGAL NOTICE NO. 2
THE PUBLIC FINANCE MANAGEMENT (MARSABIT COUNTY ASSEMBLY MORTGAGE SCHEME FUND) REGULATIONS, 2017
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 the Public Finance Management Act, 2012, the Marsabit County Assembly Service Board makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (MARSABIT COUNTY ASSEMBLY MORTGAGE SCHEME FUND) REGULATIONS, 2017

Citation

1. These Regulations may be cited as the Public Finance (Marsabit County Assembly Mortgage Scheme Fund) Regulations, 2017.

Interpretation

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

Act No. 17 of 2012

“Board” means the Marsabit County Assembly Service Board established under section 12 of the County Governments Act, 2012;

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

Act No. 13 of 2017

“collateral” has the meaning assigned to it under the Movable Properties Security Rights Act, 2017;

“committee” means the Loans Management Committee established under regulation 6;

“county assembly” means the Marsabit County Assembly;

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

“fund” means the Marsabit County Assembly Mortgage Scheme Fund established under section 116 of the Public Finance Management Act;

“member of the Scheme” means a member and staff of the Marsabit County Assembly;

“officer administering the fund” means the Clerk of the Marsabit County Assembly;

“property” means a residential house purchased 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

Cap. 532.

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

Establishment of the Fund

3. There is established a Fund under the County Assembly Service Board to be known as the Marsabit County Assembly 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, development, renovation or repair of residential property by members of the Scheme.

Initial Capital of the Fund

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the account on the date of the coming into operation of these Regulations.

(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, where such interest constitutes a surplus after meeting the requirements of regulation 18(1)(b) be credited to the capital of the Fund.

The Loans Management Committee

6. (1) There is established a committee to be known as the Members Mortgage Loans Management Committee, which shall consist of—

(a) the Leader of majority party in the County Assembly who shall be the Chairperson;

(b) the Leader of Minority party of the County Assembly;

(c) the Chairman of the Budget and Appropriations Committee of the County Assembly;

(d) the Majority party Whip of the County Assembly;

(e) the Minority party Whip of the County Assembly;

(f) four other Members of the County Assembly each nominated from the four Sub-Counties and approved by the members of county assembly to represent special interests including the youth, persons with disabilities and women; and

(g) the Clerk of the County Assembly.

(2) The officer administering the Fund shall be an ex-officio member of the Committee and the secretary to the Committee.

(3) The Committee shall administer the Fund and shall—

(a) process applications for loans in accordance with the existing terms and conditions of borrowing;

(b) liaise with the mortgage institution (if any) to set up a revolving fund for the disbursement of the loans; and

(c) supervise the day-to-day running of the Fund.

(3) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee’s functions.
(4) The quorum for a meeting of the Committee shall be the chairperson and any four members.

Board may appoint mortgage institution

7. (1) Notwithstanding Regulation 6(3), the Board may, if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf and to carry out the functions of the officer administering the Fund under Regulation 18 on behalf of the Board.

(2) The Board shall, in appointing a mortgage institution under Regulation 7(1), ensure that the mortgage institution is appointed in accordance with the requirements of the Public Procurement and Asset Disposal Act, 2015.

Utilization of loan monies

8. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Loans Management Committee may prescribe.

(2) 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.

(3) A member of the Scheme may apply to the Committee for a loan to clear an existing bank loan advanced to the member to buy a residential property provided that a loan granted to a member of the Scheme under this Regulation shall not exceed the maximum sum of Three Million Kenya Shillings.

(4) The Committee may grant a loan for the development of residential property to a member of the Scheme—

(a) who is in possession of a title deed to the land on which the development is intended to be carried out;

(b) who offers other forms of collaterals as the Committee may approve from time to time;

(c) the Committee may, in the consideration of other forms of collateral referred to in (b) above consider guarantors who shall either be—

(i) salaried individuals from whose payslips may be deducted such amount as may be owing by the member of the Scheme; or

(ii) persons who can prove to the satisfaction of the Committee that they can repay such amount as may be owing by the member of the Scheme; or

(d) in two installments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(5) The amount of the first installment granted for the purchase of land under paragraph (d) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.
Disbursement of loans for development

9. (1) A loan granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

(a) one full disbursement for a member who is in possession of a title deed to the land on which the development is intended to be carried out;

(b) two disbursements for a member who intends to purchase land on which the residential property is proposed to be developed—

(i) the first disbursement based on the value of the land on which the residential property is proposed to be developed or the value of any other collateral approved by the Committee under Regulation; and

(ii) the subsequent disbursement being the full and final balance of the total loan approved by the Committee in respect to the member of the Scheme.

Application for a loan

10. (1) An application for a 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 County Public Works Officer;

(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;

(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 a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the salary of that borrower in such installments as may be appropriate and remit such deductions to meet such costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Board in accordance with the requirements of the Public Procurement Assets and Disposal Act, 2015.

Leasehold property

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

Maximum loan disbursement

12. (1) The loan amount that a member of the Scheme may receive shall be the value of the property that the member of the scheme proposes to purchase subject to the maximum amount as shall be set by the Salaries and Remuneration Commission.

(2) A member of the Scheme 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 the
member losses their seat as a Member of the County Assembly or ceases to be a staff of the County Assembly before fully repaying the loan.

(3) A loan granted to a borrower under these Regulations shall be funded at the rate of one hundred per centum of the value of the property, for purchase of a property in Kenya.

(4) Despite sub-regulation (3), the Committee may, where it deems appropriate, grant a loan to a borrower at the market rate of the property as valued by a competent valuer.

(5) Subject to these regulations, a member of the Scheme shall be eligible for the maximum amount of loan specified under sub-regulation (1) in each term of the member of the County Assembly.

6. The Clerk of the County Assembly and the senior staff of the County Assembly approved by the Committee to be members of the Scheme shall be qualified for a subsequent maximum loan, after repayment of the first or subsequent loan, but not earlier than five years from the date of the first or subsequent loan.

7. The member of the County Assembly Service Board who is not a member of the County Assembly shall be qualified for a subsequent loan, if re-appointed by the County Assembly.

8. No member of the Scheme shall receive a loan the repayment of which shall result in salary deductions exceeding two-thirds of the monthly salary of the member of the Scheme.

**Repayment of loan**

13. (1) A loan granted under these Regulations shall be fully repaid at the end of the term of that County Assembly.

(2) Any loan disbursed under these Regulations may be repaid as direct deduction from the borrower’s monthly salary through a check off system.

(3) The Committee shall ensure that in recovering any loan under these Regulations, the net amount recoverable from the member of the Scheme after all deductions shall not be more than two third of the Borrower’s basic monthly salary.

(4) Where total deductions exceed two third of the member’s basic monthly salary, the Committee may reduce the loan that can be advanced to the member of the Scheme or reject the borrower’s application.

(5) Where the borrower offers other collateral other than land, the repayment of the loan shall be fully repaid at least six (6) months before the end of the term of the County Assembly.

(6) For the employees of the county assembly a loan granted under these Regulations shall be repayable within a period of five years or the remaining period of service of the borrower, whichever comes earlier.

**Interest on loans**

14. (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 per annum above the interest chargeable under paragraph (1) of these regulations to cover management costs.

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

Liens

15. (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 such 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.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Board.

(4) During the loan repayment period, every borrower shall—

(a) ensure that the property is used for residential purposes only;

(b) maintain the property in a satisfactory state of repair; and

(c) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Board.

(5) No borrower shall be eligible for more than one loan at a time or more than a total of two loans from the Fund.

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

Mortgage insurance

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy at his or her own cost, with an insurance firm approved by the Board.

(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.

Default in repayment

17. 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 under the loan agreement or the covenant contained in the charge or the mortgage instrument.
Mortgage loan discharge

18. (1) Upon full repayment of the loan, a signed loan discharge certificate in such form as may be prescribed by the Committee shall be issued to the member of the Scheme and a copy shall be forwarded to the Lands Registrar.

(2) The loan discharge certificate shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat from the property.

Administration of the Fund

19. (1) The officer administering the Fund shall—

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

(b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;

(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 him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act;

(e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and

(f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(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.

Responsibilities of mortgage institution

20. The responsibilities of the mortgage institution, if any, appointed under these Regulations 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 various vendors, after the necessary documentation is completed by the Committee;

(d) to pay all outgoings and issue demand notices where necessary to members 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.

**Supplementary terms**

21. (1) 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 borrower, mortgage institution (if any) and the Board.

(2) Subject to these Regulations, the Board shall 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.

**Repeal of L.N 02/2014(1)**

22. The Public Finance Management (Marsabit County Assembly Mortgage Scheme Fund) Regulations, 2014 are repealed.

(2) All funds and other assets, rights, powers and liabilities which immediately before the coming into force of these Regulations were vested in or imposed on or enforceable against the former funds repealed by paragraph (1) shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Fund.

(3) The Loans Management Committee established under the repealed Regulation existing immediately prior to the commencement of these Regulations shall continue in office and continue to operate as such.

Dated the 17th October, 2017

ADAN GUYO KANANO,
*County Executive Committee Member for Finance.*