

LEGAL NOTICE NO. ....

**THE PUBLIC FINANCE MANAGEMENT ACT, 2012**  
*(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 and Planning makes the following Regulations—

**THE PUBLIC FINANCE MANAGEMENT (STANDING DISASTER MANAGEMENT FUND) REGULATIONS, 2020**

	<b>PART I-PRELIMINARY</b>
Citation.	<b>1.</b> These Regulations may be cited as the Public Finance Management Standing Disaster Management Fund) Regulations, 2020.
Interpretation. No. 18 of 2012.	<b>2.</b> In these Regulations, unless the context otherwise requires— “Act” means the Public Finance Management Act, 2012; “Accounting Officer” means the Principal Secretary responsible for matters relating to disaster management. “Administrator of the Fund” means a person designated as such under regulation 16 (1) ; “Board” means the Standing Disaster Management Fund Oversight Board established under regulation 8; “Cabinet Secretary” has the meaning assigned to it under Section 2 of the Public Finance Management Act, 2012;

	<p>“Disaster” means progressive or sudden disruption of the functioning of a community which causes widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources.</p>
	<p>“Disaster Management” means a continuous and integrated multisectoral process of planning and implementation of measures geared towards disaster prevention, response, mitigation and recovery.</p>
	<p>“Fund” means the Standing Disaster Management Fund established under regulation 3</p>
	<p>“Mitigation” means measures undertaken to reduce the risk, impact or effects of a disaster.</p>
	<p>“Preparedness” means measures taken to prepare for and reduce the effects of disasters on lives, livelihoods, infrastructure and environment.</p>
	<p>“Response” means decisions and measures taken to contain or reduce the effects during a disaster.</p>
	<p>“Recovery” means restoration of livelihoods, assets, infrastructure and environment in the aftermath of a disaster.</p>
	<p><b>PART II — ESTABLISHMENT OF THE FUND</b></p>
Establishment of the Fund.	<p><b>3.</b> There is established a Fund to be known as the Standing Disaster Management Fund.</p>
Objects and purpose of the Fund	<p><b>4. (1)</b> The objects and purpose of this Fund shall be to mobilize resources towards efficient and effective disaster management.</p>
	<p><b>(2)</b> Without prejudice to the generality of paragraph (1), the Fund shall-</p> <ul style="list-style-type: none"> <li>(a) facilitate disaster preparedness, mitigation, response, and recovery.</li> <li>(b) provide a common basket for disaster fund in order to facilitate faster, transparent, predictable and accountable disbursement of funds for disaster management;</li> <li>(c) provide capacity and technical expertise development to improve on disaster management;</li> <li>(d) establish, manage and coordinate programmes, projects or activities to further the foregoing objectives;</li> <li>(e) facilitate establishment of effective early warning systems for</li> </ul>

	<p>disaster management;</p> <p>(f) prepare standard operating procedures for disaster management; and</p> <p>(g) perform any other purpose that would enhance the development and promotion of prudent disaster management in the country.</p>
Application of the Fund.	<p><b>5. (1)</b> The Fund shall be applied towards the objects and purpose as specified under regulation 4.</p> <p><b>(2)</b> Despite the provisions of paragraph (1), the Fund shall not apply to funding of drought related disasters.</p>
Sources of the Fund.	<p><b>6. (1)</b> The Fund shall consist of—</p> <p>(a) such moneys as may be appropriated by the National Assembly;</p> <p>(b) grants or donations for the purposes of this Fund;</p> <p>(c) income generated from the proceeds of the Fund; and</p> <p>(d) any moneys accruing to or received by the Fund from any other source as may be approved by the Cabinet Secretary</p>
	<p><b>(2)</b> The proceeds of the Fund shall be apportioned as follows—</p> <p>(a) an amount not exceeding sixty percent to disaster response and mitigation;</p> <p>(b) an amount not exceeding twenty percent to disaster preparedness; and</p> <p>(c) an amount not exceeding seventeen percent to disaster recovery.</p>
	<p><b>(3)</b> Without prejudice to paragraph (2), the Board may recommend the variation of thresholds in favour of response and mitigation with the concurrence of the Cabinet Secretary responsible for disaster management and the approval of the Cabinet Secretary for use in any particular financial year.</p>
Capital of the Fund	<p><b>7.</b> The initial capital of the Fund shall be 3 Billion Shillings appropriated by Parliament in the financial year 2021/2022.</p>
Expenditure on the Fund.	<p><b>8 (1)</b> 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><b>PART III — MANAGEMENT OF THE FUND</b></p>
Establishment of the Board	<p><b>9. (1)</b> There is established a board to be known as the Standing Disaster Management Fund Board.</p>
	<p>(2) The Board shall consist of—</p>
	<p>(a) a non-executive chairperson, appointed by the President;</p> <p>(b) the Principal Secretary for the time being responsible for matters relating to disaster management;</p> <p>(c) the Principal Secretary for the time being responsible for matters relating to finance;</p> <p>(d) the Principal Secretary for the time being responsible for matters relating to devolution;</p> <p>(e) the Principal Secretary for the time being responsible for matters relating to agriculture;</p> <p>(f) the Principal Secretary for the time being responsible for matters relating to Infrastructure, Housing and Urban Development;</p> <p>(g) the Principal Secretary for the time being responsible for matters relating to environment;</p> <p>(h) one person nominated by the Chairman of the Council of Governors with competence in matters relating to disaster management; and</p> <p>(i) three persons who are not public officers with knowledge on disaster management appointed by the Cabinet Secretary for the time being responsible for disaster management.</p>
	<p>(3) Members appointed under 2 (c), (d), (e), (f) and (g) may attend in person or through a representative nominated in writing.</p>

	<b>(4)</b> In the absence of the chairperson in any meeting of the Board, the members present shall elect one of the members under regulations 2 represent to chair the meeting.
	<b>(5)</b> The Cabinet Secretary responsible for disaster management shall, in appointing members of the Fund Board specified under paragraph 2 (i), take into account gender equity in accordance with Article 27 of the Constitution.
Co-option into the Board.	<b>(6)</b> The Board may, from time to time co-opt other members as it may deem necessary, for the proper and efficient discharge of its functions over the Fund, for such period as the Board considers necessary.
	<b>(7)</b> The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
Procedure of the Board	<b>(8)</b> The quorum for the conduct of meetings of the Board shall be two thirds of the members.
	<b>(9)</b> The Board shall regulate its own procedure.
Qualification of members of the Board	<b>10.</b> A person shall be eligible for appointment as a chairperson or member of the Board under regulation 8(2) (a) ,(h) and (i) if that person <ul style="list-style-type: none"> <li>(a) has atleast a university degree from a university recognized in Kenya;</li> <li>(b) has professional experience of not less than ten years in fields of disaster management;</li> <li>(c) satisfies the requirements of Chapter Six of the Constitution.</li> </ul>
Tenure and vaction of office	<b>11. (1)</b> The Chairperson and members of the Board appointed under regulation 9 (2) (i) respectively shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms. <p><b>(2)</b> The Chairperson or a member appointed under regulation 9 (2) (i) becomes vacant if the holder—</p> <ul style="list-style-type: none"> <li>(a) dies;</li> <li>(b) resigns from office by notice, in writing, addressed to the appointing authority;</li> <li>(c) is convicted of a criminal offence and sentenced to a term of imprisonment;</li> <li>(d) is adjudged bankrupt; or</li> </ul>

	(e) is removed from office for any of the grounds set out in regulation 12(1).
Removal from office	<p><b>12 (1)</b> The Chairperson or a member appointed under regulation 9 (2) (i) may be removed from office by the appointing authority, on recommendation of the Board—</p> <ul style="list-style-type: none"> <li>(a) has been convicted of an offence for a period exceeding six months without the option of a fine;</li> <li>(b) for gross misconduct, whether in the performance of the office holder’s functions or otherwise;</li> <li>(c) for physical or mental incapacity to perform the functions of office;</li> <li>(d) for incompetence or neglect of duty;</li> <li>(e) for absence from three consecutive meetings of the Board without a reasonable explanation; or</li> <li>(f) if that person is otherwise unable or unfit to discharge the functions of office.</li> </ul>
	(2) Before the appointing authority makes a decision under paragraph (1), the person shall be given an opportunity to provide a defence against any of the allegations.
Filling of vacancy.	<b>13.</b> If a vacancy occurs in the membership of the Board under regulation 10 or 11, the appointing authority may, if the vacancy relates to any of the positions specified under section 9 (2) (a) or (i), appoint a new member in accordance with these Regulations.
Functions of the Board.	<b>14.</b> The Board shall—
	(a) provide oversight on the administration and management of the Fund;
	(b) formulate policies to achieve the objects and purpose of the Fund;
	(c) consider, review and approve estimates of revenue and expenditure of the Fund for each financial year;
	(d) give prior approval for the opening of any bank account of the Fund before seeking approval of the National Treasury in accordance with section 28 of the Act;

	(e) receive, review and approve statutory and management reports of the Fund before submission to the Auditor-General with copies to the National Treasury and Controller of Budget;
	(f) develop policies relating to administration and timely disbursement of funds to finance disaster management interventions;
	(g) advise the Cabinet Secretary responsible for matters relating to disaster management on the proper administration of the Fund;
	(h) approve, monitor and evaluate programs and activities of the Fund;
	(i) mobilise resources for the Fund;
	(j) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary responsible for disaster management for approval and submission to the Cabinet Secretary for approval;
	(k) receive and review reports on the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
	(l) review policy on the management of assets, equipment and all properties under the Fund;
	(m) set disaster response trigger threshold for the Fund;
	(n) develop a criteria for funding arrangements with third parties; and
	(o) perform such other duties as may be considered necessary by the Cabinet Secretary responsible for disaster management from time to time for the proper administration and management of the Fund and such a duty shall be assigned in writing.
Administration of the Fund.	<b>15. (1)</b> The administrator of the Fund shall be the accounting officer responsible for matters relating to disaster management or any other person designated by the Cabinet Secretary in writing, for that purpose.

<p>No. 18 of , 2012 No. 34 of 2015</p> <p>No. 34 of 2015</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 or a Bank approved by the Board and the National Treasury in accordance with the Act;</li> <li>(b) supervise and control the administration of the Fund;</li> <li>(c) consult with the Board on matters relating to the administration of the Fund;</li> <li>(d) cause to be kept proper books of accounts and record in relation to the Fund;</li> <li>(e) prepare, sign and submit to the Board in respect of each financial year and within three months, after the end thereof, a statement of account related to the fund for approval;</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 Public Sector Accounting Standard Board shall prescribe in accordance to the provisions of the PFM Act, 2012 and Public Audit Act, 2015;</li> <li>(g) furnish additional information to the Auditor General as he/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;</li> <li>(h) prepare quarterly reports on financial and non-financial activities of the fund in accordance with the provision of the PFM Act, 2012 and as may be prescribed from time to time by the Public Sector Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and Controller of Budget; and</li> <li>(i) (i) be the custodian of all the assets, equipment and property under the Fund.</li> </ul>
	<p>(3) Despite paragraph (2), the administrator of the Fund may assign any other duty to the Secretariat for the proper administration and management of the Fund.</p>
	<p>(4) 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 of the Fund	<p><b>16 (1)</b> 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><b>(2)</b> The Chief Executive Officer and other staff of the Secretariat of the Fund shall be appointed competitively in consultation with the Public Service Commission.</p> <p><b>(3)</b> 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>
	<b>PART IV: CRITERIA FOR ACCESSING THE FUND</b>
Access of Fund	<p><b>17.</b> The Funds shall be accessed for the following components in disaster management-</p> <p>(a) preparedness;  (b) response and mitigation; and  (c) recovery.</p>
Disaster preparedness	<p><b>18.</b> For an activity to be eligible for funding under disaster preparedness, it shall meet the following-</p> <p>(a) the activity is prioritised in the strategic plan, contingency plans, sector policies and strategies;  (b) informed by disaster early warning information;  (c) demonstrate that the activity will facilitate effective response;  (d) proof that the activity does not duplicate existing efforts; and  (e) proof that a funding gap exists.</p>
Disaster response and mitigation	<p><b>19.</b> For an activity to be eligible for funding under disaster response and mitigation, it shall meet the following-</p> <p>(a) a declaration of a disaster by the the President; or  (b) proof that the magnitude of the disaster has reached the threshold for disbursement set by the Board; or  (c) demonstrate that the proposed interventions will contribute towards saving lives and livelihoods, reduce the impacts on affected sectors and fiscal burden.</p>
Disaster recovery	<p><b>20.</b> For an activity to be eligible for funding under disaster recovery, it shall meet the following-</p> <p>(i) proof of loss of livelihoods and productive assets as a result of a disaster; and  (ii) existence of a post disaster needs assessment report.</p>
	<p><b>21. (1)</b>The Administrator may enter into funding arrangement with the line Ministries, Departments and Agencies in excuting its</p>

	mandate.
	<p>(2) An entity that enters into funding arrangement with the Administrator in a manner specified in paragraph (1) shall return any unutilized funds disbursed in accordance with these Regulations where—</p> <p>(a) the purpose for which the funds were disbursed was not undertaken;</p> <p>(b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or</p> <p>(c) savings are realized as a result of change in circumstances.</p>
	<p>(3) The funds returned under paragraph (2) shall be recorded as receipts of the Fund.</p>
	<p>(5) A recipient of the funds who fails to comply with paragraph (3) shall not be eligible for any subsequent partnership until that entity has fully complied with the provisions of these Regulations.</p>
	<b>PART V – FINANCIAL PROVISIONS</b>
Application of Government regulations and procedures.	<b>22.</b> Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.
Financial year of the Fund	<b>22.</b> The financial year of the Fund shall be the period of twelve months ending on the 30 <sup>th</sup> of June of every year.
Preparation and submission of a work plan	<b>23.</b> The Administrator of the Fund shall prepare a work plan in respect of a financial year and submit to the Board for approval.
Quarterly and annual reports on proposals and disbursements	<b>24. (1)</b> The Board shall, on a quarterly and annual basis, submit the report to the Cabinet Secretary responsible for matters relating to disaster management with a copy to the Cabinet Secretary.

	<b>(2)</b> The report envisaged under paragraph (1) shall contain-
	<b>(a)</b> a summary of the proposals approved by the Board in the preceding quarter as recommended by the Secretariat of the Fund and indicating the funding status of such proposals, if any;
	<b>(b)</b> a summary of the status of disbursements from the Fund for the implementation of any proposals financed from the Fund;
	<b>(c)</b> a summary of outputs and outcomes of each proposal, where applicable;
	<b>(d)</b> any restriction imposed on any agency involved in the implementation of the proposal of the Fund.
	<b>(e)</b> contain information on the financial and non-financial performance of the Fund; and
	<b>(f)</b> ensure the reports are in a prescribed form that complies with the standards set by the Accounting Standards Board from time to time.
	<b>(2)</b> The Board shall prepare and submit quarterly monitoring and evaluation reports to the Cabinet Secretary responsible for matters relating to disaster management affairs.
Record of disbursements	<b>25.</b> An accurate record of all disbursements from the Fund shall be kept and updated every month by the Secretariat.
Administration costs of the Fund	<b>26.</b> The administration costs of the Fund shall be a maximum of three percent (3%) of the approved Budget of the Fund.
Expenditure of Fund	<b>27. (1)</b> 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>(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>
Opening bank accounts	<p><b>28. (1)</b> The Board shall approve the opening and maintenance of bank accounts for the Fund with such a bank as may be recommended by the Administrator.</p>
No. 12 of 2012	<p>(2) upon approval by the Board under paragraph (1), the administrator shall seek the approval of the National Treasury in accordance with Section 28 of the Public Finance Management Act, 2012.</p>
	<p>(3) The accounts and investments shall be held for and on behalf of the Fund in the name of the Standing Disaster Management Fund.</p>
Investment of funds	<p><b>29.</b> The Administrator may, with the approval of the Board, invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Act.</p>
Retention of receipts	<p><b>30.</b> 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.</p>
Annual reports No. 18 of 2012	<p><b>31. (1)</b> The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act and as may be prescribed from time to time by the Accounting Standards Board.</p>
	<p>(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under paragraph (1).</p>

No. 34 of 2015	<b>(3)</b> The annual financial and non-financial statements under paragraph (1) shall be approved by the Board and submitted to the Auditor General for audit within three months after the end of the financial year in accordance with the Public Audit Act and a copy thereof submitted to the Cabinet Secretary responsible Finance and Controller of Budget.
Audit No. 18 of 2012 No. 34 of 2015	<b>32.</b> The books of accounts of the Board including donor funds shall be prepared, audited and reported in accordance with Articles 226 and 229 of the Constitution, the Act and the Public Audit Act, 2015.
	<b>PART VI- MISCELLANEOUS PROVISIONS</b>
Conflict of interest	<b>33.</b> The Board shall not hold any interest in any property of the Fund otherwise other than in their capacity as Board members of the Fund or receive remuneration or be interested in the supply of work, goods or services to the Fund or any other non-pecuniary conflict of interest.
Offences and penalties.	<b>34. (1)</b> 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 the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.
	<b>(2)</b> In addition to the penalty prescribed under paragraph 1 and subject to existing relevant law, the court may order for the recovery of the monies or assets acquired as a result of the commission of the offence thereof.
Personal liability	<b>35.</b> No Board member or staff of the Secretariat shall be liable for any action, suit or proceedings for or in respect of any act done or omitted to be done in good faith in exercise of the functions, powers and duties conferred under these regulations.
Winding-up of the Fund.	<b>36. (1)</b> In the event of winding up of the Fund, the Board shall—
	<b>(a)</b> pay any amount remaining in the Fund into the National Exchequer Account for the credit of the National Government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for Disaster

	Management;
	(b) 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; and
	(c) the Cabinet Secretary shall submit a final statement of accounts of the Fund to the National Assembly.
	(2) The Board shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund and submit the financial and non-financial reports to the Auditor General for audit with a copy to the National Treasury.
	(3) The Auditor General shall after audit, submit the final report to the National Assembly within three months of the receipt of the initial report under paragraph (2), with a copy to the National Treasury.

Made on the....., 2020.

**UKUR YATANI**  
*Cabinet Secretary for the National Treasury and Planning.*