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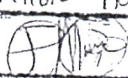
TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE JUDICIARY
FUND REGULATIONS, 2018 (LN.No 117 OF 2018)

NOVEMBER 2018

Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI.

 THE NATIONAL ASSEMBLY PAPERS LAID 13 NOV 2018	
TABLED BY:	VICE CHAIR, DELEGATED LEGISLATION HON. GYENJA
CLERK-AT-THE-TABLE:	 HON. GEDI F.

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2.0 ABBREVIATIONS

LN	Legal Notice
SI	Statutory Instruments
SO	Standing Order

3.0 CHAIRPERSON'S FOREWORD

The Judiciary Fund is established under Article 173 of the Constitution, to be administered by the Chief Registrar of the Judiciary. Article 173(5) further gives an obligation to Parliament to enact legislation to provide for the regulation of the Fund. The Judiciary Fund Act (*No. 16 of 2016*) which came into force on the 12th of June, 2016 revoked the Judiciary Fund Regulations of, 2013 made under the Judicial Service Act (*No. 1 of 2011*). .

Section 14 (1) of the Judiciary Fund Act, 2016 empowers the Chief Justice, in consultation with the Chief Registrar, to make regulations for the proper management of the Fund. It is in exercise of these powers that the Chief Justice made the Judiciary Fund Regulations published on 31st May, 2018 *vide LN No.117 of 2018*.

The Regulations were submitted to the Clerk of the National Assembly on 31st July, 2018, tabled before the House on 7th of August, 2018 and subsequently committed to the Committee on Delegated Legislation on the same day, for consideration.

The Regulations seek to provide for the management and operations of Judiciary Fund to ensure accountability and transparency in the use of resources in the Judiciary. The objective of the Judiciary Fund as provided in the Judiciary Fund Act, 2016 is to safeguard the functional and operational independence of Judiciary, ensure accountability of resources allocated to the Judiciary as well as ensure the Judiciary has adequate resources for its operations.

The Regulations provide for various sources of the Fund including; such monies as may be appropriated by the National Assembly out of the Consolidated Fund; any grants, gifts, donations or bequests; such monies as may be allocated for that purposes from investments, fees or levies administered by the Judiciary; and monies accruing to or received by the Judiciary from any other source.

The Committee scrutinised the Regulations in accordance with the Constitution, the Judiciary Fund Act, 2016, the Public Finance Management Act, 2012, the Interpretation and General Provisions Act, (Cap 2), and the Statutory Instruments Act, 2013 which regulate the making, scrutiny and publication of the Regulations.

The Committee's finding as contained in Section 2.4 of this Report is that the Regulations contain certain glaring inconsistencies with the requirements of the relevant statutes as outlined hereunder:

1. The Regulations were submitted to the National Assembly, three months after gazettelement, which is contrary to the statutory timeline of seven (7) sitting days contemplated under section 11(1) of the Statutory Instruments Act.
2. he Regulations were not accompanied by an Explanatory Memorandum as required by section 5A of the Statutory Instruments Act read together with the Schedule to the Act hence it was not possible to analyse the extent of public participation or level of consultation conducted by the regulation making authority(., the Judiciary), in preparing the Regulations. This is contrary to Sections 5 and 11(2) of the Statutory Instruments Act and the spirit of Article 10, Article 118 and Article 201(a) of the Constitution which require openness and accountability including public participation in financial matters.
3. Regulation 6 contravenes the Judiciary Fund Act and section 13(1) of the Statutory Instruments Act which requires any statutory instrument to be in accord with the Act from which it is made since it provides as among the sources for the revenues to the Judiciary Fund being fees, miscellaneous receipts as well as fines and forfeitures yet Section 4 of the Judiciary Fund Act, 2016, does not provide for such revenue as part of the sources of funds to the Judiciary Fund.
4. The Committee observed pursuant to section 13(q) of the Statutory Instruments Act read together with the enabling provisions of the Judiciary Fund Act, 2016, the Public Finance Management Act, 2012 that fines levied by the Judiciary and any other Institutions and other monetary forfeitures by the public accrue to the consolidated Fund and may not form part of the sources of the judiciary fund as Judiciary Fund Act does not expressly provide for fines and forfeitures as being part of the sources Fund.
5. Section 17 of the Unclaimed Financial Assets Act (No. 40 of 2011) includes as assets subject to the Act assets held by court or Government department and assets held for the owner by a court or a Government department that remains unclaimed by the owner for more than one year after becoming payable or distributable which is then presumed to be abandoned. Forfeitures should therefore accrue as abandoned or unclaimed financial assets regulated by the Unclaimed Financial Assets Authority and not accrue to be part of the Judiciary Fund.

Having undertaken a scrutiny of the Regulations and having satisfied itself that the Judiciary Fund Regulations, 2018 contravene the Constitution, the Public Finance Management Act, 2012; the

Judiciary Fund Act, 2016 and the Statutory Instruments Act, 2013 the **Committee unanimously resolved to annul in entirety the said Regulations.**

In conclusion, I wish to express the Committee's gratitude to the Speaker and the Office of the Clerk and other supporting Directorates for providing the necessary technical support to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Judiciary Fund Regulations, 2018.**

HON. GLADYS BOSS SHOLLEI CBS MP

4.0 PREFACE

1.1 Establishment and Mandate of the Committee

1.1.1 The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

1.1.2 The Committee is mandated to consider in respect of any statutory instrument, whether it:

- a) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b) infringes on fundamental rights and freedoms of the public;
- c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d) contains imposition of taxation;
- e) directly or indirectly bars the jurisdiction of the court;
- f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g) it involves expenditure from the consolidated fund or other public revenues;
- h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j) appears to have had unjustifiable delay in its publication or laying before Parliament;
- k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m) inappropriately delegates legislative powers;
- n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o) appears for any reason to infringe on the rule of law;

- p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

1.2.1 The Committee comprises the following Members –

- 2. **Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
- 3. **Hon. Fatuma Gedi, MP** - **Vice- Chairperson**
- 4. Hon. Isaac Waihenya Ndirangu, MP
- 5. Hon. Alice Wahome, MP
- 6. Hon. Robert Mbui, MP
- 7. Hon. Daniel Maanzo, MP
- 8. Hon. Muriuki Njagagua, MP
- 9. Hon. Timothy Wanyonyi, MP
- 10. Hon. Alfred Sambu, MP
- 11. Hon. Ronald Kiprotich Tonui, MP
- 12. Hon. William Kamoti, MP
- 13. Hon. Gideon Mulyungi, MP
- 14. Hon. William Kamket Kassait, MP
- 15. Hon. Martha Wangari, MP
- 16. Hon. (Dr.) Wilberforce Oundo, MP
- 17. Hon. Abdi Koropu Tepo, MP
- 18. Hon. George Gitonga Murugara, MP
- 19. Hon. Jennifer Shamalla, MP
- 20. Hon. Munene Wambugu, MP
- 21. Hon. Clement Muturi Kigano, MP
- 22. Hon. Patrick Kariuki Mariru, MP
- 23. Hon. Sammy Seroney, MP

1.3 Committee Secretariat

1.3.1 The secretariat comprises of the following members of staff –

Ms. Susan Maritim	Senior Clerk Assistant (Team Leader)
Mr. Jimale Mohamed	Clerk Assistant III
Mr. Dima Dima	Principal Legal Counsel
Ms. Anne Kigoro	Research & Policy Analyst
Mr. Josphat Motonu	Fiscal Analyst
Mr. Charles Ayari	Audio Officer
Mr. Anthony Wamae	Serjeant at Arms
Ms. Mary Otieno	Office Assistant

5.0 CONSIDERATION OF THE STATUTORY INSTRUMENT

5.1 Introduction

- 5.1.1 The Judiciary Fund is established under Article 173 of the Constitution of Kenya, to be administered by the Chief Registrar of the Judiciary. Article 173(5) further puts the obligation on Parliament to enact legislation to provide for the regulation of the Fund. Consequently, pursuant to Article 173 (5) of the Constitution the Judiciary Fund Act (No. 16 of 2016) was enacted and commenced on the 12th of June, 2016. .
- 5.1.2 Section 14 (1) of the Judiciary Fund Act, 2016 empowers the Chief Justice, in consultation with the Chief Registrar, to make regulations for the proper management of the Fund. It is in exercise of these powers that the Chief Justice published the Judiciary Fund Regulations on 31st May, 2018 *vide* LN No.117 of 2018.
- 5.1.3 The Regulations were submitted to the Clerk of the National Assembly on 31st July, 2018, tabled before the House on 7th August, 2018 and subsequently committed to the Committee on Delegated Legislation on the same day, for consideration.

5.2 Purpose of the Fund and Brief Overview of the Regulations

The expected benefit of the Regulations is to provide for efficient management and operation of the Judiciary Fund to ensure accountability and transparency in the use of resources in line with the public finance management principles.

The Regulations contain various provisions for proper management and operation of the Judiciary Fund, as follows –

- 5.2.1 **PART I (Preliminary)** provides for the objects and purpose of the funds, source of funds which includes money appropriated by the National Assembly, revenue collection by the Judiciary which includes fees, fine and forfeitures;

5.2.1.1 Object and Purpose of the Fund (Regulation 4)

The Regulations seek to;

- i) provide for the proper management of the Fund;

- ii) set out a standardized financial management system of the Fund capable of producing accurate and reliable accounts, which will be useful in management decisions and statutory reporting;
- iii) ensure accountability, transparency and the effective, efficient and economic use of the Fund; and
- iv) Ensure adherence to the principles of public finance set out in Article 201 of the Constitution in the management of the Fund.

5.2.1.2 The sources of the Fund (Regulation 5) comprise;

- i) such monies as may be appropriated by the National Assembly out of the Consolidated Fund;
- ii) any grants, gifts, donations or bequests;
- iii) such monies as may be allocated for that purposes from investments, fees or levies administered by the Judiciary; and
- iv) moneys accruing to or received by the Judiciary from any other source.

5.2.2 Regulation 6 provides that the revenue collected by the Judiciary includes fees, fines and forfeiture and miscellaneous receipts.

5.2.3 PART II (Budget Preparation) outlines the procedures for preparation of budget estimates including supplementary estimates as well as provisions for reallocation of funds within programmes and sub-votes within a financial year;

PART III (Utilisation of the Fund) outlines the provisions for utilization of the funds in the Judiciary which includes provisions on authorization of expenditure, payment of goods and services, preparation of budgetary expenditure reports;

PART IV (Expenditure in Relation to Human Resources) and **V (Imprest Management)** contains provisions for expenditure in relation to human resources in the Judiciary and establishment and management of imprest respectively;

PART VI (Accounts and Reporting) provides the procedures for accounts and reporting whereas **PART VII (Internal Audit and Risk Management)** provides for internal audit of the Fund as well as risk management.

5.3 Legal Framework for Scrutiny of the Instrument

5.3.1 The Committee undertook scrutiny of the Regulations in conformity with the Constitution of Kenya, the Judiciary Fund Act (No. 16 of 2016), the Judicial Service Act (No. 1 of 2011), the Public Finance Management Act, (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

5.4 Committee Findings

Following comprehensive scrutiny of the Regulations, the Committee made the following findings:–

1. The Judiciary Fund Regulations, 2018 published on 31st of May, 2018 vide *LN No.117* of 2018 were submitted to the Clerk of the National on 31st of July 2018, which was out of the statutory timelines of seven sitting days contemplated under section 11(1) of the **Statutory Instruments Act and hence pursuant to section 11(4) were to be ceased to have effect after the last day for it to be so laid.**
2. The committee took note of the forwarding letter by the Chief Registrar of the Judiciary, dated 31st July, 2018 which quoted sections 11(2) and 12 (3) of the **Statutory Instruments Act** . While considering section 12(3) of the **Statutory Instruments Act**, cited in the forwarding documents by the Chief Registrar of the Judiciary, *which seeks to exempt rules, regulations and orders emanating from courts of competent jurisdictions from scrutiny*, the Committee during the scrutiny considered the Judiciary as an important arm of the Government and an institution created by the Constitution (for purposes of the Fund) and not a court of competent jurisdiction contemplated under section 12(3) of the **Statutory Instruments Act** .
3. The Committee noted that the relevant section for transmitting any statutory instrument to the Parliament is Section 11(1). Further, that Regulations from **the Judiciary is not exempted from scrutiny as contemplated by Section 12(3) of the SI Act since it is not considered a court of competent jurisdiction in Kenya;**
4. The Regulations are made pursuant to section 14 of the Judiciary Fund Act, which Act, at section 14(2) (b) expressly subjects the Regulations to the Statutory Instruments Act, which

requires submission of all Statutory Instruments to Parliament within seven sitting days of publication.

5. The provisions in the Regulations have a force of law within the meaning of Article 94(6) of the Constitution and may not therefore qualify from exemption from scrutiny or from any other requirements set out in the Statutory Instruments Act, 2013 read together with section 14(2) of the Judiciary Fund Act. **Contrary to section 13(a) of the Statutory Instruments Act, 2013, Regulation 6 provides as part of the sources of the revenues to the Judiciary Fund being fees, miscellaneous receipts as well as fines and forfeiture yet Section 4 of the Judiciary Fund Act, 2016, excludes such revenues as part of the sources of funds to the Judiciary Fund.**
6. The Committee observed that **Regulation 6 also contravenes Article 206 of the Constitution which explicitly states that all money raised or received on behalf by or on behalf of the national government shall be paid to the Consolidated Fund, hence is inconsistent with section 13 of the Statutory Instruments Act, 2013.**
7. Forfeitures according to the regulations, form part of the sources of the Fund. Section 17 of the Unclaimed Financial Assets Act (*No. 40 of 2011*) includes as assets subject to the Act assets held by court or Government department and assets held for the owner by a court or a Government department that remains unclaimed by the owner for more than one year after becoming payable or distributable which is then presumed to be abandoned. Forfeitures should therefore accrue as abandoned or unclaimed financial assets regulated by the Unclaimed Financial Assets Authority and not accrue to be part of the Judiciary Fund.
8. **Pursuant to section 13(q) of the Statutory Instruments Act, 2013, the committee considered that diversion of funds from the Consolidated Fund is a substantive matter that may require to be in a statute and not subsidiary legislation; since diverting these revenues from the Consolidated Fund to the Judiciary Fund shall require the assessment of the financial implication in accordance with Article 114 of the Constitution on money Bills.;**
9. The Constitution, the Judiciary Fund Act and the Public Finance Management Act, 2012 provide for the requirement of submission of the Judiciary Estimates to the National Assembly for approval which was not demonstrated since there was no Explanatory memorandum made for the Regulations.

The Regulations were not accompanied by an Explanatory Memorandum as required by section 5A of the Statutory Instruments Act hence it was not possible to analyse the extent of public participation or level of consultation conducted required by Section 5 of the Statutory Instruments Act and the spirit of Article 10 and Article 118 of the Constitution;

10. The Regulations are however unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for these Regulations pursuant to section 6 of the Statutory Instruments Act

COMMITTEE RESOLUTION

Having scrutinised the Judiciary Fund Regulations, 2018 against the Constitution of Kenya, the Judiciary Fund Act (No. 16 of 2016), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2), the Committee resolved to annul in entirety, the said Regulations, pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, for the aforementioned reasons.

Signed.....

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Date.....

13/11/2018

**HON. GLADYS BOSS SHOLLEI CBS MP
CHAIRPERSON**

9. ANNEXURES

- (i) Committee Minutes
- (ii) Sitings
- (iii) Adoption List
- (iv) Copy of the Judiciary Fund Regulations, 2018
- (v) Correspondence

MINUTES OF THE 59TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON THURSDAY, 23RD OCTOBER, 2018, AT 11.30 A.M. IN THE
NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS

PRESENT

The Hon. Gladys Boss Shollei CBS MP - Chairperson
The Hon. Robert Mbui, MP
The Hon. Patrick Kariuki Mariru, MP
The Hon. Alice Wahome, MP
The Hon. Muriuki Njagagua, MP
The Hon. (Dr.) Wilberforce Oundo, MP
The Hon. Jennifer Shamalla, MP
The Hon. Timothy Wanyonyi, MP
The Hon. Ronald Kiprotich Tonui, MP
The Hon. Daniel Maanzo, MP

The Hon. Muturi Kigano, MP
The Hon. Munene Wambugu, MP
The Hon. William Kamoti, MP
The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

The Hon. Fatuma Gedi, MP - Vice Chairperson
The Hon. George Gitonga Murugara, MP
The Hon. Martha Wangari, MP
The Hon. William Kamket Kassait, MP
The Hon. Isaac Waihenya Ndirangu, MP
The Hon. Gideon Mulyungi, MP

ABSENT

The Hon. Abdi Koropu Tepo, MP
The Hon. Alfred Sambu, MP
The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - Senior Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel II
Mr. Charles Ayari - Audio Records Officer
Mr. Anthony Wamae - Serjeant-at-Arms
Ms. Mary Otieno - Office Superintendent

MIN.NO. /NA/CDL/2018/324 PRELIMINARIES

The meeting was called to order at thirty-five minutes past ten o'clock followed by Prayer and preliminary remarks.

MIN.NO. /NA/CDL/2018/335 CONFIRMATION OF MINUTES

Minutes of the 57th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Jennifer Shamalla, MP and Hon. Patrick Kariuki Mariru, MP respectively.

Minutes of the 58th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Alice Wahome, MP and Hon. Jennifer Shamalla, MP respectively.

MIN.NO. /NA/CDL/2018/336 MATTERS ARISING

UNDER MIN.NO. /NA/CDL/2018/325

Invitation by the National Environmental Management Authority to consider draft NEMA Regulations

The Committee Members were reminded to confirm their itinerary with the secretariat for the upcoming retreat scheduled to take place in Mombasa from Thursday, 1st to Sunday 4th November, 2018.

MIN.NO. /NA/CDL/2018/336 CONSIDERATION OF THE JUDICIARY FUND REGULATIONS, 2018

Further to the Committee meeting held on 11th October 2018 on this matter, the Committee made the following observations –

1. the Judiciary Fund Regulations, 2018 were published on 31st May, 2018 vide LN No.117 of 2018 and submitted to the Clerk of the National on 31 July 2018. The Committee noted that this is **contrary to the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act;**
2. the forwarding letter by the Chief Registrar of the Judiciary, dated 31 July 2018 quoted Sections 11(2) and 12 (3) of the SI Act. The Committee noted that the relevant section for submission/transmittal of statutory instrument to the relevant House is Section 11(1). Further, the Judiciary is not exempted from scrutiny as contemplated by Section 12(3) of the SI Act since it is not a court of competent jurisdiction in Kenya;
3. the enabling provision of the parent Act is missing from the submitted Regulations;
4. Regulation 6 provides for sources of revenue to the Judiciary as those collected by the Judiciary including fees, fines, forfeiture and miscellaneous receipts. The Committee

observed that this provision contravenes Article 206 of the Constitution which explicitly states that all money raised or received on behalf by or on behalf of the national government shall be paid to the Consolidated Fund. The Judiciary Fund Act does not exempt the Judiciary from remitting collections from revenues such as fees, fines and forfeitures to the Consolidated Fund. To this end, the Regulations contravene the Constitution of Kenya and the Judiciary Fund Act; and

5. the Regulations were not accompanied by an Explanatory Memorandum as required by section 5A of the Statutory Instrument Act hence it was not possible to analyse the extent of public participation or level of consultation conducted required under section 5 of the Statutory Instrument Act and the spirit of Article 10 and Article 118 of the Constitution.

Recommendation

The Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, the Judiciary Fund Regulations, 2018 be annulled in entirety for the aforementioned reasons. This decision was proposed by Hon Timothy Wanyonyi, MP and Seconded by Hon. Daniel Maanzo, MP.

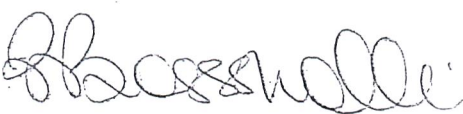
MIN.NO. /NA/CDL/2018/337 ANY OTHER BUSINESS

The Committee was reminded about the meeting scheduled with the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation on Thursday 25th October, 2018 to consider extension sought for tea and sugar regulations.

The Legal Counsel was tasked to prepare a brief on the matter and copies of the expired Regulations be circulated to the Members after the meeting.

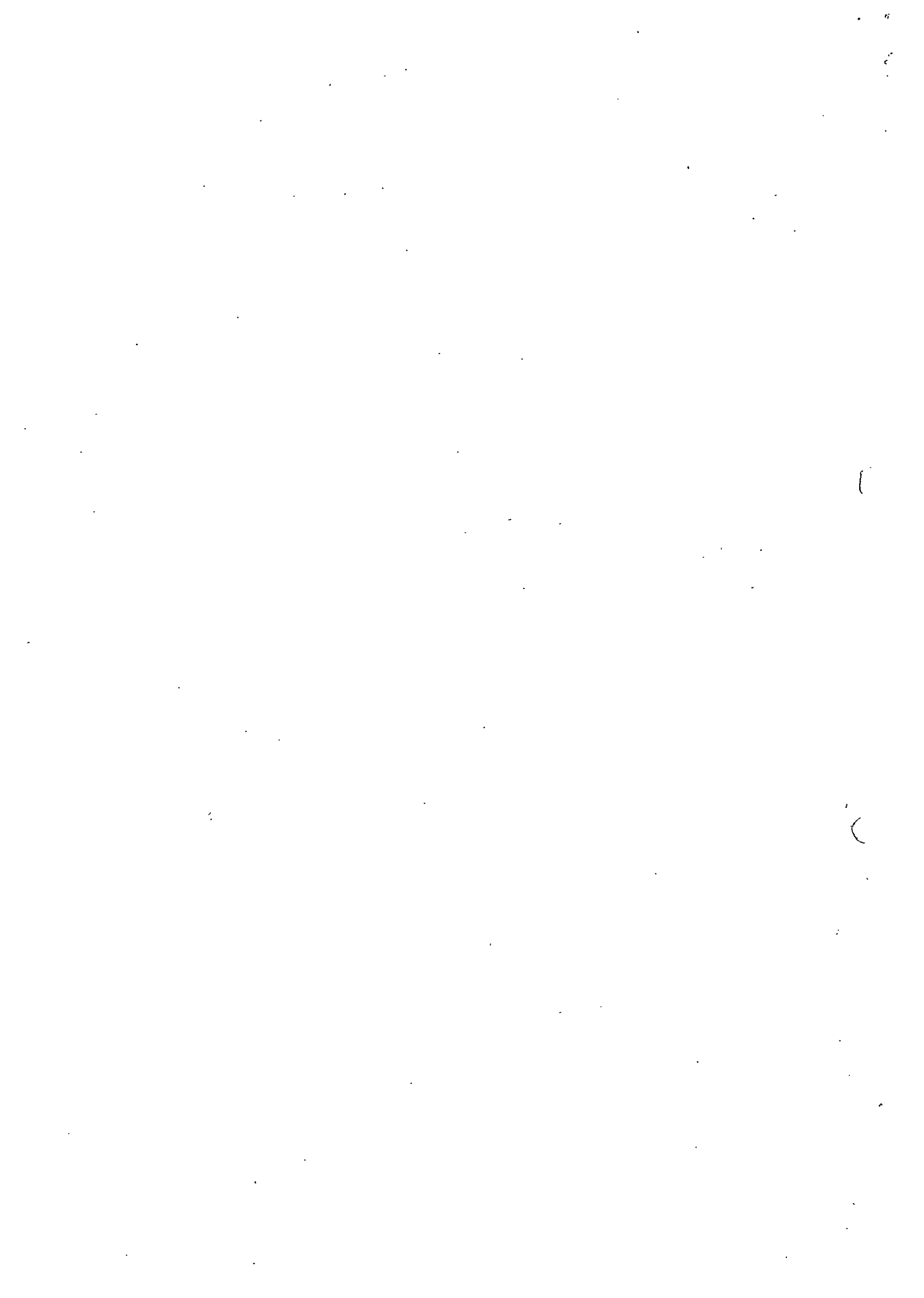
MIN.NO. /NA/CDL/2018/338 ADJOURNMENT

There being no other business, the meeting was adjourned at 1.00 pm until Thursday, 25th October, 2018.

Signed: 

Date: 25/10/2018

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)



MINUTES OF THE 56TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON THURSDAY, 11TH OCTOBER, 2018, AT 11.30 A.M. IN
COMMITTEE ROOM NO.12, MAIN PARLIAMENT BUILDINGS

PRESENT

The Hon. Gladys Boss Shollei CBS MP - Chairperson
The Hon. Daniel Maanzo, MP
The Hon. William Kamket Kassait, MP
The Hon. Munene Wambugu, MP
The Hon. William Kamoti, MP
The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

The Hon. Fatuma Gedi, MP - Vice Chairperson
The Hon. George Gitonga Murugara, MP
The Hon. Patrick Kariuki Mariru, MP
The Hon. Robert Mbui, MP
The Hon. Timothy Wanyonyi, MP
The Hon. (Dr.) Wilberforce Oundo, MP
The Hon. Jennifer Shamalla, MP
The Hon. Martha Wangari, MP
The Hon. Ronald Kiprotich Tonui, MP
The Hon. Alice Wahome, MP
The Hon. Isaac Waihenya Ndirangu, MP
The Hon. Charles Gimose, MP
The Hon. Muriuki Njagagua, MP
The Hon. Muturi Kigano, MP
The Hon. Abdi Koropu Tepo, MP
The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Principal Legal Counsel
Ms. Anne Kigoro - Research and Policy Analyst
Mr. Josphat Motonu - Fiscal Analyst
Mr. Anthony Wamae - Serjeant-at-Arms

MIN.NO. /NA/CDL/2018/315

PRELIMINARIES

The meeting was called to order at forty minutes past eleven o'clock followed by Prayer and preliminary remarks by the Chairperson.

MIN.NO. /NA/CDL/2018/316

CONFIRMATION OF MINUTES

Minutes of the 51st sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Daniel Maanzo, MP respectively.

Minutes of the 52nd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. William Kamoti, MP respectively.

Minutes of the 53rd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Munene Wambugu, MP and Hon. Sammy Seroney, MP, respectively.

Minutes of the 54th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Munene Wambugu, MP and Hon. William Kamoti, MP respectively.

Minutes of the 55th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Munene Wambugu, MP respectively.

MIN.NO. /NA/CDL/2018/317

MATTERS ARISING

No matters arose

MIN.NO. /NA/CDL/2018/318

CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND) REGULATIONS, 2018

The Chairperson informed the Committee that the Public Finance Management (Sports, Arts and Social Development Fund); Regulations, 2018 were laid before the National Assembly on 15th August, 2018 as a subsidiary legislation under the Public Finance Management Act (No. 18 of 2012 and committed to the Committee for consideration.

The chairperson then welcomed the Fiscal Analyst from the Parliamentary Budget Office to brief members on the Regulations. He informed the committee on the analysis of the Public Finance Management (Sports, Arts and Social Development Fund) regulations, 2018.

Brief overview

The Legal Notice Number 174 was issued in accordance with the provisions of the Public Finance Management Act 2012, which gives the Cabinet Secretary in charge of the National Treasury powers to create a public fund with the approval of the National Assembly.

The proposed regulations provide for establishment and operations of sports, arts and social development fund whose objective is to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. Regulation 7(2) enumerates the specifics on where the funds will be applied in order to achieve the intended objective.

The Fiscal Analyst further informed the meeting the following:-

The proposed regulations provide for establishment of Sports, Arts & Social Development Fund (Regulation 3) with an initial capital of KSh 20 million appropriated by Parliament in 2018/19 financial year (regulation 6).

Regulation 4 provide the various sources of funds for the fund including required proceeds due to the fund provided under the Betting, Lotteries and gaming Act, required proceeds due to the fund under the Income Tax Act, moneys provided by the National Assembly ,grants and donations and income generated from the proceeds of the fund.

Regulation 4(2) provides for the apportionment of the fund as follows;

- i. 35%-promotion and development of sports
- ii. 40%-social development including Universal Health Care
- iii. 20%-promotion and development of arts
- iv. 5%-government strategic interventions approved by the Cabinet

Regulation 8 provide for the management of the fund where a Sports, Arts and Social Development Fund oversight Board consisting of eight (8) members. The Members of the Board are the Principal Secretaries responsible for Finance, Sports, Arts, Health, Education and three (3) persons appointed by the Cabinet Secretary in charge of Sports.

The functions of the Board are enumerated under regulation 10. In terms of administration of the fund, the regulations (regulation 11) gives this responsibility to the Principal Secretary in charge of Sports including the functions to be undertaken as an Administrator to the Fund.

The regulations also provide for the CEO of the Board as well as a Secretariat to support the functions of the Board. The administrative expense of running the fund has been capped at a maximum of 3% of the approved budget for the fund.

Regulations 13 provides for the funding eligibility criteria for sports organizations, professional sports person and government implementing agency as well as the required documentations for the processing of the applications for funding.

Regulation 15 enumerates the various conditions to be met before the disbursement of funds from the fund. Regulation 22 provides for the various offences and penalties whereas regulation 23 makes provisions for winding of the fund.

The Committee was also notified on the Salient Issues as follows:

- i. The aim of the proposed regulations is to provide for establishment and operations of sports, arts and social development fund whose objective is to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. However, these regulations do not seem to be anchored on legislation. The Sports, Arts and Social Development Fund proposed to be established here appears to be different from the National Sports Fund established by the Sports Act, 2013.
- ii. The regulations provide for the establishment of an eight (8) member oversight Board with a Secretariat. This provision has financial implications since this Board and the Secretariat has to incur expenditures. Such a provision should be introduced through legislation so as it undergoes the usual assessment in view of Article 114 of the Constitution.

He further concluded that the aim of the proposed regulations was to provide for establishment and operations of sports, arts and social development fund whose objective was to provide resources to support the development and promotion of sports and arts and the promotion of social development including universal health care. However, there were some aspects that ought to be addressed by the substantive legislation such as the establishment of the Oversight Board with a Secretariat that may require assessment of Article 114 of the Constitution.

The Chairperson then welcomed the Legal Counsel to brief Members on the Rules. He informed the Committee THAT:

- (i) In exercise of the powers conferred by section 24(4) of the Public Finance Management Act, (No. 18 of 2012), the Cabinet Secretary for the National Treasury and Planning published the Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018 on 10th August, 2018 vide LN No.174 of 2018. The Regulations were subsequently tabled before the House being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- (ii) Regulation 3 provides for the establishment of Sports, Arts & Social Development Fund with an initial capital of Kshs. 20 million appropriated by Parliament in 2018/19 financial year (Regulation 6).
- (iii) Regulation 4 provides for the various sources of funds for the fund including required proceeds due to the fund provided under the Betting, Lotteries and Gaming Act, required proceeds due to the fund under the Income Tax Act, monies provided by the National Assembly, grants and donations and income generated from the proceeds of the fund.

The Legal Counsel further informed the meeting that Regulation 4(2) provides for the apportionment of the Fund as follows;

- i. 35% for the promotion and development of sports;
 - ii. 40% for social development including Universal Health Care;
 - iii. 20% for promotion and development of arts; and
 - iv. 5% for government strategic interventions approved by the Cabinet.
- (iv) Regulation 8 provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members. The Members of the Board are the Principal Secretaries responsible for Finance, Sports, Arts, Health, Education and three (3) persons appointed by the Cabinet Secretary in charge of Sports.
 - (v) Regulation 10 provides for the functions of the Board.
 - (vi) Regulation 11 provides for administration of the Fund and gives this responsibility to the Principal Secretary in charge of Sports, including the functions to be undertaken as an Administrator to the Fund.
 - (vii) The Regulations also provide for the CEO of the Board as well as a Secretariat to support the functions of the Board. The administrative expense of running the Fund has been capped at a maximum of 3% of the approved budget for the Fund.

- (viii) Regulation 13 provides for the funding eligibility criteria for sports organizations, professional sports persons and government implementing agency as well as the required documentations for the processing of the applications for funding.
- (ix) Regulation 15 enumerates the various conditions to be met before the disbursement of funds from the Fund.
- (x) Regulation 22 provides for the various offences and penalties whereas Regulation 23 makes provisions for winding up of the fund.

The Committee was further informed about the purpose of the Regulations and what it intend to seek:-

- 1) specify the sources, object and purpose of the Fund including the criteria for sharing of the proceeds for development of sports, arts and health sectors;
- 2) provide guidance on the administration and management of the Fund;
- 3) establish the Sports, Arts and Social Development Fund governance structure, which includes the Board to advise the Cabinet Secretary for Sports and Heritage on the proper and effective performance of the Fund, the Administrator of the Fund and the Secretariat;
- 4) set out the eligibility criteria, application procedure, allocation procedure disbursement to eligible institutions/persons;
- 5) set out obligations of the recipients of the funds;
- 6) gives powers to the Board to impose sanctions to implementing agencies or recipients institutions/persons in order to promote accountability and prudent use of public resources;
- 7) review of the performance of the Fund through regular monitoring and evaluation;
- 8) provide for the withdrawals from the Fund;
- 9) provide for reporting of the Fund to the National Assembly; and
- 10) Provide for the winding up of the Fund.

Committee Observations

The Committee made the following observations:-The Committee considered the Regulations in conformity with the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General

Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

Committee Findings

Following comprehensive scrutiny of the Regulations, the Committee made the following findings:-

THAT, the Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act;

THAT, the Regulations are contrary to section 13(1) of the Statutory Instruments Act 2013 since they are inconsistent with the Sports Act, 2013 for the following reasons:-

- i. the Regulations seek to establish a Fund known as the Sports, Arts and Social Development Fund with the sources of the Fund being proceeds required to be paid into the Fund under the Betting, Lotteries and Gaming Act, proceeds required to be paid into the Fund under the Income Tax Act, monies appropriated by the National Assembly, grants and donations, income generated from proceeds of the Fund and monies accruing to, or received for the fund from any other source.

Section 12 of the Sports Act (No.25 of 2013) also establishes a Fund known as the National Sports Fund with its sources being *“the proceeds of any sports lottery, taxes levied under the Betting, Lotteries and Gaming Act, investments and any other payments required by the Act to be paid into the Fund”*.

- ii. Regulation 8 provides for the establishment of a Sports, Arts and Social Development Fund Oversight Board consisting of eight (8) members while Section 13 of the Sports Act also establishes a Board of Trustees to manage the Fund; and
- iii. the country also runs the risk of duplication between the Fund and other existing entities under the Sports Act 2013, hence caution should be taken to avoid duplication and wastage of public resources.

THAT, there is annexed to the Regulations, an Explanatory Memorandum which explains the extent of public participation to include some of the key stakeholders consulted being, the Ministry of Sports and Heritage, Ministry of Health, Ministry of Interior and Coordination of National Government, relevant accounting officers of National and County Governments, the general public and international experts. The Explanatory Memorandum does not, however,

demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act, hence it was not possible to analyse the extent of public participation or level of consultation conducted required under section 5 of the Statutory Instrument Act and the spirit of Article 10 and Article 118 of the Constitution.

THAT, the Regulations do not require a regulatory impact statement within the meaning of section 8 of the Statutory Instrument Act, 2013 as they do not impose significant costs to the community of part of the community.

COMMITTEE RESOLUTION

Having scrutinised the Public Finance (Sports, Arts and Social Development) Regulations, 2018 against the Constitution of Kenya, the Public Finance Management Act (No. 18 of 2012), the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2), the Committee **resolved to annul in entirety, the said Regulations, pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act, for the aforementioned reasons.**

MIN.NO. /NA/CDL/2018/319 CONSIDERATION OF THE JUDICIARY FUND) REGULATIONS, 2018

The Fiscal Analyst informed the committee on the analysis of the Judiciary Fund Regulations, 2018.

Brief overview

The Judiciary Fund Regulations, 2018 was issued in accordance with the provisions of the Judiciary Fund Act, 2016. Section 14 of the Judiciary Act gives the Chief Justice in consultation with the Judiciary Registrar power to make regulations for proper management of the Judiciary Fund created by the Act.

The regulations provide for management and operations of Judiciary Fund to ensure accountability and transparency in use of resources in the Judiciary among other desired tenets of public finance management. The objective of the Judiciary Fund as provided in the Judiciary Fund Act, 2016 is to safeguard the functional and operational independence of Judiciary, ensure accountability of resources allocated to Judiciary as well as ensure the Judiciary has adequate resources for its operations.

Summary of the provisions

The regulation has various provisions for management and operations of the Judiciary Fund.

Part I of the regulations provides for the objects and purpose of the funds; source of funds which include money appropriated by the National Assembly; revenue collection by Judiciary which include fees, fine and forfeitures.

Part II of the regulations outlines the procedures for preparation of budget estimates including supplementary estimates as well as provisions for reallocation of funds within programmes and sub votes within a financial year.

Part III of the regulations has provisions for utilization of the funds in the Judiciary which includes provisions on authorization of expenditure, payment of goods and services, preparation of budgetary expenditure reports.

Part IV and V of the regulations have provisions for expenditure in relation to human resources in the Judiciary and establishment and management of imprest respectively.

Part VI provides the procedures for Accounts and reporting whereas part VII provide for internal Audit of the fund as well as risk management.

Salient issues

- i. Under Section 4 of the Judiciary Fund Act, 2016, fines and forfeitures have not been highlighted as part of the sources of funds to the Judiciary fund. However, Paragraph 6 of these regulations provides for the revenues to the Judiciary Fund as fees, miscellaneous receipts as well as fines and forfeitures. Therefore, this is a substantive matter that may require legislation since diverting these revenues from the Consolidated Fund to the Judiciary Fund shall require the assessment of the implication according to Article 114 of the Constitution.
- ii. Regulation 13 provides for the fund retaining any moneys that have not been utilized at the close of the financial year. This provision is also provided in the Principal Act. The Constitution and the Public Finance Management Act, 2012 provides for the submission of the Judiciary Estimates to the National Assembly for approval. The best practice is that of lapsing of appropriation and seeking re-appropriation for the new fiscal year. For the

public Funds that retain their accruals are either the special purposes or the self-sustaining ones such as the Equalization Fund and the Kenya Airports Authority Fund respectively.

- iii. Regulation 27 provides for submission of bank accounts held by the fund to the National Treasury, by the Chief Registrar. The Bank account details also need to be provided to the Controller of Budget who authorizes withdrawal of funds and the Auditor General whose function is to audit all government institutions.

On conclusion the Fiscal Analyst noted that the regulations provide for management and operations of Judiciary Fund to ensure accountability and transparency in use of resources in line with the public finance management principles. However, the regulations seem to introduce substantive matters that may need to be addressed by the main legislation as opposed to the subsidiary legislation.

The Committee was informed that a comprehensive brief by the Legal Counsel was not ready but he noted the following:-

In exercise of the powers conferred by **Section 14(1) of the Judiciary Fund Act, (No. 16 of 2016)** the Chief Justice published the Judiciary Fund Regulations, 2018 on 31st May, 2018 vide **LN No.117/2018** as a subsidiary legislation under the Judiciary Fund Act, (No. 16 of 2016).

The Judiciary Fund Regulations, 2018 were tabled before the National Assembly on 7th August, 2018. This was **contrary to the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**

Article 173 of the Constitution of Kenya, 2010 establishes the Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary. Further, Article 173(5) provides that Parliament shall enact legislation to provide for the regulation of the Fund. Pursuant to this provision, the Judiciary Fund Act, (No. 16 of 2016) was enacted.

The Regulations were **unlikely to impose significant costs** on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6 of the SI Act.

The scrutiny was undertaken in conformity with the Constitution of Kenya, the Judiciary Fund Act, (No. 16 of 2016), the Public Finance Management Act, (No. 18 of 2012), the Statutory

Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

Purpose of the Regulations

The Regulations seek to;

- i) provide for the proper management of the Fund;
- ii) set out a standardized financial management system of the Fund capable of producing accurate and reliable accounts, which will be useful in management decisions and statutory reporting;
- iii) ensure accountability, transparency and the effective, efficient and economic use of the Fund; and
- iv) Ensure adherence to the principles of public finance set out in Article 201 of the Constitution in the management of the Fund.

The sources of the Fund comprise;

- i) such monies as may be appropriated by the National Assembly out of the Consolidated Fund;
- ii) any grants, gifts, donations or bequests;
- iii) such monies as may be allocated for that purposes from investments, fees or levies administered by the Judiciary; and
- iv) moneys accruing to or received by the Judiciary from any other source.

Regulation 6 provides that revenue collected by the Judiciary includes fees, fines and forfeiture and miscellaneous receipts.

The expected benefit of the regulations was to provide for management and operations of the Judiciary Fund to ensure accountability and transparency in use of resources in line with the public finance management principles.

Committee Findings

Following comprehensive scrutiny of the Regulations, the Committee made the following findings –

1. THAT, the Regulations were not accompanied by an Explanatory Memorandum as required by section 5A of the Statutory Instrument Act hence it was not possible to analyse the extent of public participation or level of consultation conducted required under section 5 of the Statutory Instrument Act and the spirit of Article 10 and Article 118 of the Constitution.

2. **THAT, under Section 4 of the Judiciary Fund Act, 2016**, fines and forfeitures have not been highlighted as part of the sources of funds to the Judiciary fund. However, Regulation 6 of the Judiciary Fund Regulations, 2018 provides for the **revenues to the Judiciary Fund as fees, miscellaneous receipts as well as fines and forfeitures**. Therefore, this is a substantive matter that may require legislation since diverting these revenues from the Consolidated Fund to the Judiciary Fund shall require the assessment of the implication according to Article 114 of the Constitution on Money Bills. Regulation 6 therefore contravenes the parent Act.
3. **THAT, Regulation 13 provides for the fund retaining any moneys that have not been utilized** at the close of the financial year. This provision is also provided in the Parent Act under Section 7 of the Judiciary Fund Act, 2016. The Constitution and the Public Finance Management Act, 2012 provides for the submission of the Judiciary Estimates to the National Assembly for approval. The best practice is that on lapsing of appropriation the entity seeks re-appropriation for the new fiscal year. Public Funds that retain their accruals are either the special purposes or the self-sustaining ones such as the Equalization Fund and the Kenya Airports Authority Fund respectively.
4. **THAT, Regulation 27** provides for submission of bank accounts held by the fund to the National Treasury by the Chief Registrar. However, the Bank account details also need to be provided to the Controller of Budget who authorizes withdrawal of funds and the Auditor General whose function is to audit all government institutions as provided for in the Constitution and the Public Finance Management Act, 2012.

COMMITTEE RESOLUTION

Having listened to the presentation the Committee resolved to meet on Tuesday 16th October 2018 to make final decision on the Judiciary Fund Regulations, 2018.

MIN.NO./NA/CDL/2018/320

REQUEST FOR EXTENSION OF TEA & SUGAR REGULATIONS

The Committee was informed that the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation vide a letter dated 22nd August, 2018 prepared and forwarded to the Clerk of the National Assembly two sets of Regulations to be considered by the Committee on Delegated Legislation. The meeting was notified that the Cabinet Secretary was consulting the committee pursuant to section 21(2) of the Statutory Instruments Act for purposes of extending the operations of the Regulations for twelve months. The Regulations among others were two sets:-

Tea (Licensing, Registration and Trade) Regulations, 2008 and the Sugar (Imports, Exports and By-products) Regulations 2008 which were published in 2008 long before the enactment of the Statutory Instruments Act.

The Committee further directed the secretariat to get a detailed explanation regarding Request for Extension of all other Regulations which its time had lapsed. It was further noted that all Regulatory making authorities need to comply with the House Resolution.

MIN.NO. /NA/CDL/2018/321 ANY OTHER BUSINESS

The Committee discussed the following issues:-

1. NEMA Regulations

The meeting was notified on an invitation letter by the National Environment Management Authority (NEMA) requesting to meet the Committee in a retreat. The Committee therefore resolved to undertake the retreat with the Authority (NEMA) to consider the draft Regulations and hoped that they will discuss these Regulations comprehensively and be able to deal with issues arising. The Regulations are as follows:-

1. Draft Environmental (Strategic Assessment, Integrated Impact Assessment and Environmental Audit) Regulations, 2018
2. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2017
3. The Environment Management and Coordination (Conservation and Management of Wetlands) Regulations, 2017
4. The Environmental Management and Coordination (Electrical Electronic Waste Management) Regulations, 2016


The Committee, however, resolved that the activity be undertaken from Thursday, 1st to Sunday 4th November, 2018 in Mombasa, and not Naivasha as per the invitation.

2. FOREIGN Visits

On foreign visits, the Committee was informed that the Delegation to the Global Aviation Security Symposium & Second High Level Conference, Montreal, Canada (23 November – 1 December 2018) was on course and Members will be updated on the progress in the subsequent meetings.

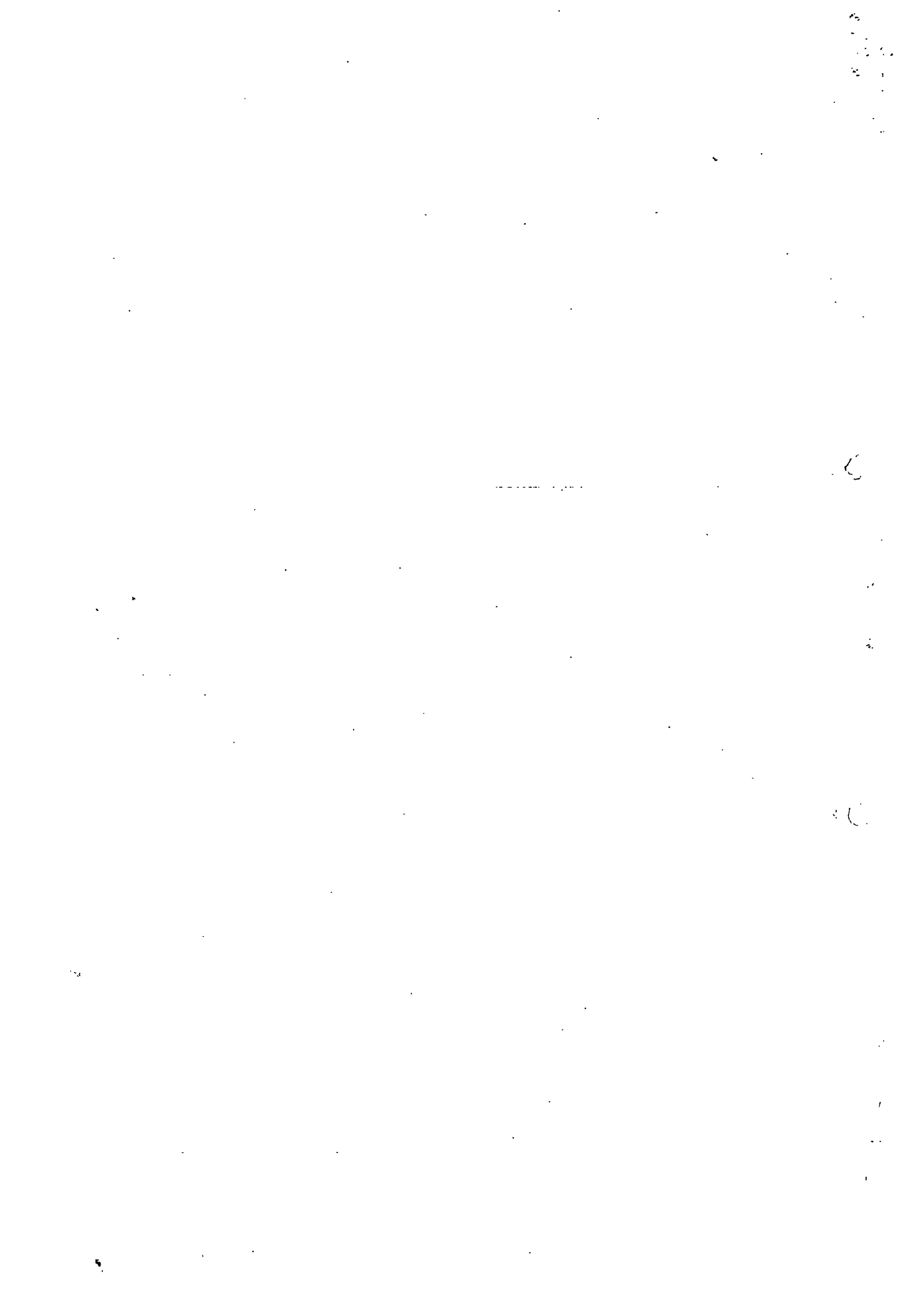
MIN.NO. /NA/CDL/2018/322 ADJOURNMENT

There being no other business, the meeting was adjourned at 1.20 pm. The next meeting will be called on notice.

For Signed: 

Date: 16th October, 2018

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)



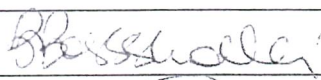
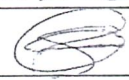

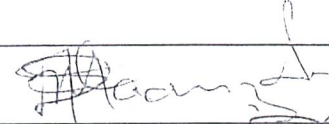
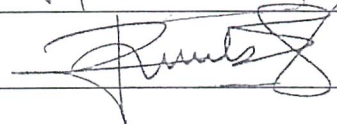
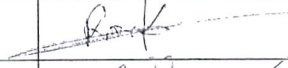
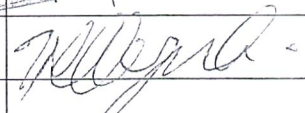

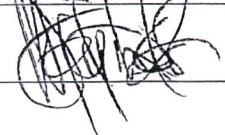
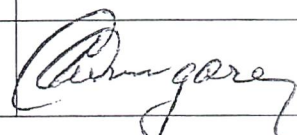
COMMITTEE ON DELEGATED LEGISLATION

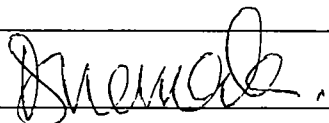
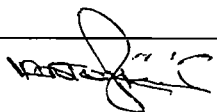
ADOPTION LIST

REPORT ON THE ADOPTION OF THE REPORT ON THE JUDICIARY FUND
REGULATIONS, 2018

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 06/11/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss Shollei, CBS, MP (Chairperson)	
2.	Hon. Fatuma Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Alfred Wekesa Sambu, MP	
5.	Hon. Muriuki Njagagua, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Gideon Mulyungi, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Robert Mbui, MP	
10.	Hon. Martha Wangari, MP	
11.	Hon. Ronald Kiprotich Tonui, MP	
12.	Hon. Timothy Wanyonyi, MP	
13.	Hon. William Kamoti, MP	
14.	Hon. Patrick Kariuki Mariru, MP	
15.	Hon. (Dr.) Wilberforce Oundo, MP	
16.	Hon. Abdi Tepo, MP	
17.	Hon. George Gitonga Murugara, MP	

	HON. MEMBER	SIGNATURE
18.	Hon. Jennifer Shamalla, MP	
19.	Hon. Munene Wambugu, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. William Kamket Kassait, MP	
23.	Hon. Tindi Mwale, MP	

Telephone Nairobi 2221221
Email: chiefregistrar@judiciary.go.ke



CHIEF REGISTRAR'S CHAMBERS, JUDICIARY
SUPREME COURT BUILDING
P.O. Box 30041 - 00100
NAIRO

When replying please quote

CRJ/

THE JUDICIARY

July 31 2018

The Clerk
National Assembly
Parliament Buildings
NAIROBI

① Please facilitate tabling ~~of the regulations~~
D.L.S.P
8
1/8/18

Dear Sir

RE: JUDICIARY FUND REGULATIONS

Pursuant to the provisions of Sections 11(2) and 12(3) of the Statutory Instruments Act No. 23 of 2013, I hereby submit the duly Gazetted Judiciary Fund Regulations for your further action.

I look forward to hearing from you in due course.

Yours faithfully

ANNE A. AMADI, CBS
CHIEF REGISTRAR OF THE JUDICIARY

② Haced, Tabue, Othello
P/S Registrar and
Counsel tabled
proposals
2/8/18

RECEIVED
01 AUG 2018
CLERK'S OFFICE

③ M.M. CA
for ready tabling
P/S
6/8/18

RECEIVED
06 AUG 2018
National Assembly
Table Office

processed
Delegates

NO. 16 OF 2016
JUDICIARY FUND ACT
SUBSIDIARY LEGISLATION



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List of Subsidiary Legislation

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JUDICIARY FUND REGULATIONS, 2018
ARRANGEMENT OF REGULATIONS

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2. Interpretation.

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4. Object and purpose.
5. Sources of Funds.
6. Revenue.

PART II — BUDGET OPERATIONS

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8. Reallocations.

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10. Funding of State Corporations and Semi-Autonomous Government Agencies.
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13. Monies to be retained in the Fund.
14. Delegation of powers and functions.

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32. Further investigations by the Auditor-General.
33. Financial Statements.

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 35. Operational independence of internal audit.
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Judiciary Fund

[Subsidiary]

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 46. Regulations to prevail.
 47. Reference to laws, regulations etc.
-

JUDICIARY FUND REGULATIONS, 2018

[L.N. 117/2018.]

PART I — PRELIMINARY

1. Citation

These Regulations may be cited as the Judiciary Fund Regulations, 2018.

2. Interpretation

In these Regulations, unless the context otherwise requires —

"Account Code" means combination of codes which will be in force at the time of application under the Government Financial Statistics.

"Act" means the Judiciary Fund Act, 2016 ,(No. 16 of 2016);

"Audit Committee" means the sub-committee of the Commission formed pursuant to the provisions of section 14 of the Judicial Service Act, 2011 (No. 1 of 2011), section 73 of the Public Finance Management Act, 2012 (No. 18 of 2012), regulation 174 of the Public Finance Management (National Government) Regulations, 2015 (L.N. No. 34/2015 and Audit Committee Guidelines for National Government Entities as may be revised or replaced from time to time;

"Authority to Incur Expenditure (AIE) holder" means a Judicial Officer or Judiciary Staff authorized by the Chief Registrar in writing to incur expenditure;

"Commission" means the Judicial Service Commission established by Article 171 of the Constitution;

"Financial Records" comprises all documents that support financial transactions

"Fund" means the Judiciary Fund established by Article 173 of the Constitution.

"Head of Finance Directorate" means a person appointed in such capacity and is a member of a statutory body responsible for the professional regulation of accountants in Kenya.

"Head of Internal Audit" means a person appointed in such capacity as the head of audit and risk management and is a member of a statutory body responsible for the professional regulation of auditors in Kenya.

"Internal auditing" means an independent, objective assurance and consulting activity designed to add value and improve an organization's operations, which helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

"Irregular expenditure" means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any relevant legislation, including the Public Finance Management Act, the Act and these regulations.

"Judiciary Staff" means persons employed in the judiciary but without power to make judicial decisions.

"Public Sector Accounting Standards Board" means the Accounting Standards Board that provides frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities.

"State Corporations and Semi-Autonomous Government Agencies" means any organization established by law to be financed wholly or substantially by the Judiciary from the Fund.

[Subsidiary]

"Unauthorized expenditure" means overspending of a vote or programme within a vote; or expenditure not in accordance with the purpose of a vote or, in the case of a programme, not in accordance with the purpose of the programme;

"Wasteful expenditure" means any expenditure that was incurred which could have been avoided had due care and diligence been exercised.

3. Application and Enforcement

(1) These Regulations shall apply to all matters relating to the financial management of the Fund.

(2) The administration of the Fund is vested in the Chief Registrar.

(3) The Regulations shall apply to a Judicial Officer or Judiciary Staff in exercise of any powers and functions relating to the administration of the Fund whether in exercise of delegated authority or otherwise.

4. Object and purpose

The object and purpose of the Regulations is to —

- (a) provide for the proper management of the Fund;
- (b) set out a standardized financial management system of the Fund capable of producing accurate and reliable accounts, which will be useful in management decisions and statutory reporting;
- (c) ensure accountability, transparency and the effective, efficient and economic use of the Fund; and
- (d) Ensure adherence to the principles of public finance set out in Article 201 of the Constitution in the management of the Fund.

5. Sources of Funds

The sources of the Fund comprise —

- (a) such monies as may be appropriated by the National Assembly out of the Consolidated Fund;
- (b) any grants, gifts, donations or bequests;
- (c) such monies as may be allocated for that purposes from investments, fees or levies administered by the Judiciary; and
- (d) moneys accruing to or received by the Judiciary from any other source.

6. Revenue

(1) Revenue collected by the Judiciary include fees, fines and forfeiture and miscellaneous receipts;

(2) The Chief Registrar may issue guidelines, rules and procedures on the collection and management of revenue

(3) For purposes of these regulations—

Fees - are charges that are assessed for delivery of services by the Judiciary.

Fines - fines may be assessed as part of the outcome of judicial proceedings and are paid to Judiciary by offenders on conviction.

Forfeitures - funds that are deposited with the Courts pending determination of a matter and forfeited as part of the disposal of the matter. They include both monetary and non-monetary assets. Forfeitures may also arise from convictions in cases such as those connected with drugs or game poaching as well as instances where bail is forfeited when the conditions for bail are breached.

Miscellaneous receipts - these include funds received for miscellaneous services not being fees, fines or forfeitures and include items such as tender fees.

PART II — BUDGET PREPARATION

7. Budget preparation

(1) At least three months before the commencement of each financial year, the Chief Registrar shall prepare estimates of all income and expenditure required for the purposes of the Act for the following year and shall present such estimates to the Commission for review.

(2) The Chief Registrar shall, upon review by the Commission, submit the estimates to the National Assembly for approval and provide a copy to the National Treasury and the Chief Justice.

(3) Upon the approval of the estimates by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid from the Consolidated Fund directly into the Fund.

(4) Supplementary estimates may be prepared for approval by the National Assembly in accordance with Article 223 (1) (a) of the Constitution subject to review by the Commission.

(5) The Budget estimates referred to under sub-regulation (1) shall —

- (a) differentiate between recurrent and development expenditure;
- (b) be grouped according to the economic classification;
- (c) be programme based .

8. Reallocations

(1) The Chief Registrar may reallocate funds from the authorised use but may not reallocate funds where—

- (a) the funds are appropriated for transfer to another government entity;
- (b) the funds are appropriated for capital expenditure except to defray other capital expenditure;
- (c) the reallocation of funds is from wages to non-wages expenditure; or
- (d) the transfer of funds may result in contravention of fiscal responsibility principles.

(2) The Chief Registrar may reallocate funds between programs, or between Sub-Votes, in the budget for a financial year if —

- (a) there are provisions in the budget of a program or Sub-Vote which are unlikely to be utilised;
- (b) a request for the reallocation has been made to the that Commission explaining the reasons for the reallocation and the Commission has approved the request; and
- (c) the total sum of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for program or Sub-Vote for that financial year.

(3) The Chief Registrar may, with the approval of the Commission, reallocate funds within Sub-votes or programs.

(4) The Chief Registrar shall submit quarterly reports of any reallocations to the Commission.

PART III — UTILIZATION OF THE FUND

9. Authorisation of Expenditure

(1) The appropriations approved by the National Assembly shall constitute the required authorization for the Chief Registrar to incur obligations and expenditures for the purposes for which the appropriations have been approved and for the amounts so voted.

(2) The Chief Registrar may authorize a Judicial Officer or a Judiciary Staff to be an AIE holder in writing. The authorisation shall in the minimum include;

- (i) the responsibilities of the AIE holder;

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- (ii) the guidelines to be adhered to by the AIE holder in discharging their responsibilities;
 - (iii) the requirement for the AIE holder to uphold the highest levels of integrity, professionalism, transparency and accountability.
- (3) The AIE issued shall in the minimum contain —
- (i) the AIE number and to whom it is issued;
 - (ii) the authorized total expenditure;
 - (iii) a description of the expenditure item; and
 - (iv) the account code to which the expenditure is to be debited.
- (4) The Chief Registrar shall keep records in such a form as will clarify at any time, in respect of the Fund —
- (i) the total amount of expenditure sanctioned for the year;
 - (ii) the amount of the expenditure charged; and
 - (iii) any further known liabilities in respect of the year;
- (5) Subject to these Regulations, all procurement and asset disposal in the Judiciary shall be done in accordance with the Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015) and its regulations or any other written law governing procurement as may be applicable.
- (6) In the management of the Fund, an AIE holder shall, be subject to the following procedures —
- (a) when the AIE is issued, the allocation shall be entered as a commitment in the master vote book so as to ascertain at all times the available balances;
 - (b) the AIE holder shall adhere to the following in relation to control of expenditure —
 - (i) there shall be no divided responsibility and only the officer to whom the AIE has been issued is permitted to commit or incur expenditure against it; and
 - (ii) an AIE holder shall not wait for suppliers to submit invoices in order to clear his or her commitment, but he or she shall regularly have his or her outstanding commitments checked and enquiries made from the suppliers, particularly in the last three months of the financial year.

10. Funding to state corporations and semi-autonomous government agencies

Funding of state corporations and semi-autonomous government agencies shall be effected through transfers from the Fund.

11. Payment for goods and services

(1) Payment from the Fund for goods and services shall only be made on the basis of duly certified supporting vouchers and other documents indicating that the goods or services in respect of which the payment is made have been received in accordance with the procedure and policies governing payment as may be contained in manuals, circulars, guidelines, or directions as may be issued by the Chief Registrar;

(2) All forms of payments shall be designated and any changes in signatories shall be authorized by the Chief Registrar.

(3) Advance payments shall not be made to suppliers for goods and services unless provided for in the contractual terms and conditions contained in a valid contract signed between the Judiciary and the supplier.

(4) Advance payments shall not exceed 20% of the contract price and shall be supported by a bank guarantee.

12. Quarterly Budgetary expenditure reports

The Chief Registrar shall prepare and submit quarterly budgetary expenditure report for the Fund to the Commission and the Controller of Budget with copies to the National Treasury.

13. Monies to be retained in the Fund

(1) Pursuant to section 7 of the Act all receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained in the Fund and applied in accordance with the Constitution and the Act.

(2) All funds allocated to the Fund shall be cumulative and shall be carried forward from one financial year to the next.

14. Delegation of powers and functions

(1) The Chief Registrar, may for purposes of the Fund, delegate to a Judicial Officer or Judiciary Staff, the powers or functions of the Chief Registrar in writing.

(2) In exercising such delegated powers and functions, the Judicial officer or Judiciary staff, shall comply with any lawful directions of the Chief Registrar.

(3) The delegation in this regulation may include the authority to incur expenditure in accordance with any limits prescribed by the Chief Registrar.

(4) Delegation of power under this regulation does not take away the responsibility of accountability from the Chief Registrar.

PART IV — EXPENDITURE IN RELATION TO HUMAN RESOURCES

15. Expenditure in relation to human resource

(1) Activities relating to the authorization of appointments, payments and the recording of those payments shall be performed by different officers.

(2) The budgetary allocation for the cost of human resources shall be determined on the basis of a detailed costing of the staff establishment of the Judiciary as approved by the Commission.

(3) The Chief Registrar shall ensure that the human resources cost of all appointees, as well as promotion and salary increases, can be met within the budgetary allocation of the Fund.

16. Salary and other advances to staff

The Chief Registrar may authorize salary and other advances for Judicial Officers and Judiciary Staff in accordance with the Judiciary Human Resource Policies and Procedures.

PART V— IMPREST MANAGEMENT

17. Establishment of an imprest facility

(1) The Chief Registrar shall establish an imprest facility including the maximum amount for the specific purpose of that imprest facility.

(2) There shall be three types of imprests, namely —

- (i) Temporary or Safari imprest;
- (ii) Standing imprest; and
- (iii) Special imprest.

(3) An imprest shall be issued for a specific purpose, and any payments made from it, shall be only for the purposes specified in the imprest warrant.

(4) Temporary imprests shall be issued in respect of official journeys and are intended to provide officers with funds with which they can meet travelling, accommodation and incidental expenses.

(5) A holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after the end of the official journey.

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1. Subshell

2. Current practice - why is it illegal - public part - parent law - Const.

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(6) If the imprest holder fails to account for or surrender the imprest on the due date, the Chief Registrar shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank of Kenya Rate.

(7) If the Chief Registrar does not recover the temporary imprest from the defaulting officer as provided for in this regulation, the Chief Registrar commits an offence.

(8) If an imprest is to be recovered from any defaulting officer by instalments, the Chief Registrar shall personally authorize such recovery and such moneys shall no longer be an imprest but an unauthorized advance from the Fund, and in addition to the interest charged under sub- regulation (6), the Chief Registrar shall take appropriate disciplinary action against the officer concerned for the abuse of the imprest.

(9) When an imprest holder leaves the service, or is transferred, he or she shall surrender the total standing imprest which includes cash plus payment vouchers which together amount to the fixed level of the imprest.

(10) The holder of a standing imprest shall keep a memorandum cash book to record all receipts and payments and the balance on hand shall agree with the cash balance recorded in the cash book, and in the absence of any receipts, the actual cash balances plus the expenses paid shall equal at all times the fixed level of the imprest for which the imprest holder is personally responsible.

(11) An imprest holder who needs replenishment of funds shall send an abstract and analysis of his memorandum cash book, together with the originals of the supporting payment vouchers to the Head of Finance Directorate.

(12) Upon receipt of the abstract under sub- regulation (11), the Head of Finance Directorate upon being satisfied that the expenditure has actually been incurred for the intended purposes, and there is no irregularity in the payment vouchers, shall authorize replenishment of the imprest.

(13) The Head of Finance Directorate shall ensure that regular random reviews are made of the standing imprest by—

- (a) counting the cash on hand;
- (b) confirming that the actual cash on hand corresponds with the balance on hand as recorded in the cash book;
- (c) confirming that all movements (expenses and receipts) since the last check have been properly recorded and are properly documented;
- (d) ensuring that the documents justify the difference between the fixed imprest level and the actual cash balance; and
- (e) reporting on any anomalies found to the Chief Registrar who shall take appropriate action.

(14) A special imprest utilized for any expenditure on services of a confidential nature, the purpose and the particulars of which cannot be made public, shall be supported by a certificate that the money has been paid, and a declaration by the Chief Justice and the Chief Registrar that they have satisfied themselves that the money has been properly expended, and has not been used to supplement the emoluments of any officer.

(15) For purposes of this Regulation—

- (a) a special imprest is any imprest utilised for expenditure on services of a confidential nature.
- (b) the Chief Registrar shall only classify expenditure as confidential expenditure, if the disclosure of that expenditure—
 - (i) is likely to interfere with the independence of the Judiciary as may be determined by the Chief Justice and the Chief Registrar;
 - (ii) is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;
 - (iii) is likely to involve the disclosure of confidential deliberations or decisions of the Commission or of a committee of the Commission;

- (iv) is likely to divulge any confidential information communicated in confidence by the Judiciary to any other arm of government or a by another arm of government to the Judiciary and which would prejudice national security or relations between the arms of government;
 - (v) would unfairly prejudice the commercial interests of anybody or person; and
 - (vi) is likely, for any other reason, to form the basis for a claim by a foreign state or persons on the national government or county government in a judicial proceeding; and
- (c) the Chief Registrar shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of the Commission and Parliament information or any other document on the nature of confidential expenditure under this Regulation,

18. Imprest holder

An officer holding an imprest shall ensure that —

- (a) the imprest issued to him or her shall be used for the intended purpose only;
- (b) the imprest moneys and any payment vouchers awaiting replenishment are adequately safeguarded at all times;
- (c) proper cash sale receipts are received for all payments out of the imprest;
- (d) the full amount of the imprest is accounted for at all times in cash, money at bank and completed payment vouchers; and
- (e) goods purchased through imprest are taken on charge and certificate issued.

PART VI — ACCOUNTS AND REPORTING

19. Financial records and automation of financial records

- (1) Financial records shall be maintained in manual and electronic form.
- (2) The Chief Registrar shall develop mechanisms to ensure that financial records are safeguarded, accurate, reliable and free from fraud.
- (3) Any alteration or deletion of any financial record or data whether electronic or manual must be authorised and approved in writing by the Chief Registrar.

20. Adjustments

- (1) All Journal entries prepared for all adjustments shall be authorised by the Chief Registrar or any Judicial Officer or Judiciary Staff exercising delegated authority before posting them in the general ledger.
- (2) All journal vouchers shall be supported by sufficient explanations, authorizations and documentation to facilitate the accounting adjustments.

21. Receipts and payment vouchers

- (1) All receipts and payment vouchers shall be properly supported by the appropriate authorization and documentation.
- (2) All receipts and payment vouchers shall be, or made out, in indelible ink and shall contain adequate narration of the particulars of the services, goods or works procured and being paid for.
- (3) All amounts appearing in a voucher shall be written in words as well as in figures.

22. Authorisation of payment vouchers

- (1) The Chief Registrar or an AIE holder may authorize payment vouchers for expenditure chargeable to the respective vote.
- (2) The Chief Registrar may prescribe the financial limits and other conditions under which the authority in sub-regulation (1) may be exercised.

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23. Clearance and suspense account

(1) All the transactions relating to clearance and suspense accounts shall be supported by authentic and verifiable source documents, clearly indicating the approved allocation.

(2) Where it is necessary and to account for expenditure transactions in a clearing or suspense account, the Head of Finance Directorate shall ensure that —

- (a) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
- (b) monthly reconciliations are performed to confirm the balance of each account; and
- (c) reports on uncleared items are prepared on a monthly basis and submitted to the Chief Registrar.

24. Accountable documents

(1.) All accountable documents whether manual or in electronic form shall be under strict control at all times and they shall include—

- (a) indent forms (for supplies from government printer or government stores);
- (b) local purchase order;
- (c) local service order;
- (d) authority to incur expenditure; (e) cheques;
- (e) receipt books; and
- (f) imprest warrants.

(2) The Chief Registrar shall keep stock of all accountable documents in manual form under safe custody, issuing them in accordance with the daily needs of the Fund, and keep an accurate up-to-date record of their use.

(3) Where the accountable documents are in electronic form, the Chief Registrar shall put in place appropriate mechanisms for safeguarding and tracking them.

25. Preservation of accountable documents, books and records

(1) The Chief Registrar shall, subject to the provisions of the relevant national legislation, retain certain documents of whatever kind and such documents shall be preserved in the following circumstances—

- (a) where they may be of value to the national archives; or
- (b) if they are the subject of unfinished audit enquiries; or
- (c) if they are likely to be needed for pension purposes.

(2) Despite the provisions of sub-regulation (1), the following classes of documents and records shall be preserved for a stipulated minimum period of time as detailed below —

- (a) Principal ledger - 10 years
- (b) Cash books - 10 years
- (c) Journals - 3 years
- (d) Payment vouchers - 5 years
- (e) Paid cheques or electronic payments - 3 years
- (f) Completed indent warrants - 12 months after the end of the financial year to which they relate.
- (g) Completed order forms - 12 months after the end of the financial year to which they relate.
- (h) Duplicate receipts - 12 months after the end of the financial year to which they relate.
- (i) Duplicate payment vouchers - 12 months after the end of the financial year to which they relate.

- (j) Receipt books either fully used, obsolete or partly used 6 months after date of completion but must be inspected by the Auditor General and the disposal noted in the main counterfoils receipts, book registers.

(3) After the expiry of the retention periods under sub-regulation (2) of this regulation, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and that the information can be reproduced, where necessary.

26. Bank Accounts

(1) Pursuant to section 9 of the Act, the Chief Registrar shall open and maintain, such bank accounts as may be necessary for the effective management of the Fund.

(2) The bank accounts referred to in sub-regulation (1) shall be opened and closed with the approval of the Commission.

(3) Separate ledger accounts shall be maintained for each bank account held.

(4) The Head of Finance Directorate shall obtain from the banks monthly bank statements, which shall, where applicable, be accompanied by withdrawal instructions and debit and credit advice.

(5) The Head of Finance Directorate shall reconcile each bank account monthly and submit to the Chief Registrar detailed information on the reconciled accounts.

(6) No bank account shall be overdrawn, nor shall any advance or loan be obtained from bank accounts held for the management of the Fund.

(7) Personal cheques shall not be deposited in any Judiciary bank account.

(8) For all bank accounts held, there shall be at least two authorized signatories to approve payment or funds transfer.

(9) All signatories in respect of cheques, or electronic payments and fund transfers authorized and any changes thereto shall be designated by the Chief Registrar.

(10) The names, designation and specimen signatures and any changes thereto shall be communicated to the bank in writing by the Chief Registrar.

(11) The signatories under this regulation shall —

- (a) initial the counterfoil or enter with their personal passwords;
- (b) be equally responsible for the regularity of the payment; and
- (c) thoroughly scrutinize the documents supporting the payment.

(12) Spoilt cheques shall be marked prominently with the stamp "Cancelled", and fixed securely to the cheque-list used for controlling the cheques issued each day.

(13) The Head of Finance Directorate shall be responsible for the safe custody of the cheques and counterfoils as evidence of payment.

27. Submission of list of bank accounts to National Treasury

(1) The Chief Registrar shall, by the 30th September of each year, provide the National Treasury with an up-dated list of all bank accounts held by the Fund.

(2) The list referred to under sub-regulation (1) shall include the following information —

- (a) name of the bank where the account is held;
- (b) name of the bank account;
- (c) type of bank account;
- (d) signatories of the bank account;
- (e) date on which the bank account was opened;
- (f) the bank account number;
- (g) purpose for the bank account, if different from the main operational bank account of the government entity;
- (h) the bank account balances as at the 30th June each year.

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28. Application of the Standard Chart of Accounts

The classification of financial transactions in the Fund shall be based on the Standard Chart of Accounts and/ or any such standards as may be applicable and issued by the Public Sector Accounting Standards Board.

29. Control systems

(1) The Chief Registrar shall ensure that proper control systems exist for safe keeping of assets and that—

- (a) Preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
- (b) Movement and conditions of assets can be tracked; and
- (c) Stock levels are at an optimum and economical level.

(2) The Chief Registrar shall put in place proper processes and procedures both electronic and manual for the effective, efficient, economical and transparent use of the Fund's assets.

(3) The Chief Registrar shall be responsible for the proper custody, care and use of inventories under control of the Judiciary.

(4) Accountability shall only be discharged when inventories have been—

- (a) consumed in the course of business and records to show that such inventories have been consumed are available.
- (b) worn out in the normal course of public business and removed from the stores records and has been approved by Chief Registrar or they have been disposed off in accordance with the Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015); or
- (c) lost, stolen, destroyed, damaged or rendered unserviceable other than by fair wear and tear, and is removed from the store's record.

(6) If the Chief Registrar is satisfied that the retention of any inventories is no longer in the public interest, the Chief Registrar may authorize disposal in accordance with the Public Procurement and Asset Disposal Act, 2015.

(7) the Chief Registrar shall report annually to the Commission any removal and disposal from the store's record under sub-regulation (6).

(8) Where the Chief Registrar has reason to believe that any officer —

- (a) has received an inventory and has not duly handed it over;
- (b) has received an inventory for which the person is accountable but has not duly accounted for it; or
- (c) has in hand an inventory which has not duly been applied to the purpose for which they were collected, the Chief Registrar shall serve a notice upon the said officer requesting that within a time specified in the notice, the officer shall pay for, account for, or apply the inventory and the officer shall submit to the Chief Registrar satisfactory evidence that this has been done.

30. Register of assets

(1) The Chief Registrar through the Head of Finance Directorate shall maintain a register of all assets under his or her control or possession.

(2) The register of assets shall record each asset, the terms on which it is held with reference to its acquisition, location and address, dates and cost of acquisition, disposal or major changes in use and value and other pertinent management details.

31. Loss of assets

The loss of any cash, inventories assets or equipment of the Judiciary shall be reported to the Chief Registrar who shall launch an investigation and take appropriate action.

32. Further investigation by Auditor General

The authorization of disposal of a case of loss does not prejudice the right of the Auditor-General to carry out further investigation.

33 Financial Statements

(1) The Chief Registrar shall prepare financial statements for the Fund for each financial year in a form prescribed by the Public Sector Accounting Standards Board and shall ensure that the report contains information on the financial and non-financial performance of the Fund.

(2) Upon approval by the Commission and not later than three months after the end of each financial year, the Chief Registrar shall submit the financial statements prepared under this regulation to the Auditor-General.

(3) The Chief Registrar shall disclose in the financial statements a list of special funds or State Corporations and Semi-Autonomous Government Agencies funded from the Fund.

PART VII—INTERNAL AUDIT AND RISK MANAGEMENT

34. Responsibilities of internal auditors

(1) The key functions of Internal Auditors shall include among others —

- (a) Reviewing mechanisms for governance, transparency and accountability with regard to the finances and assets of the Judiciary;
- (b) Conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the Judiciary;
- (c) Verifying the existence of assets and ensuring that there are proper safeguards for their protection;
- (d) Providing assurance that appropriate institutional policies and procedures and good business practices are followed;
- (e) Evaluating the adequacy and reliability of information available to management for making decisions;
- (f) Reviewing and evaluating budgetary performance, financial management, transparency and accountability mechanisms and processes; and
- (g) Giving reasonable assurance through the audit committee on the state of risk management, control and governance within the Judiciary.

(2) In carrying out their functions, the internal auditors may, subject to the approval of the Audit Committee enlist the services of professional experts on a need basis.

35. Operational independence of internal audit

The Head of Internal Audit shall report administratively to the Chief Registrar and functionally to the Chief Justice and the Audit Committee.

36. Annual internal audit work plan

(1) The Internal Audit and Risk Management Unit shall prepare and submit an annual internal audit work plan based on risk assessment of the Fund to the Chief Justice and Audit Committee by the 15th February each financial year.

(2) The Audit Committee shall, if satisfied approve the work plan and submit to the Chief Registrar.

(3) Once the work plan is approved, the Chief Registrar shall ensure that the budget to implement it is included in the Judiciary budget.

37. Unrestricted access by internal auditors

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In undertaking audit of the Fund the internal auditors shall have unrestricted, direct and prompt access to all records, officials or personnel holding any contractual status with the Judiciary and to all the premises and properties of the Judiciary.

38. Confidentiality by internal auditors

The internal auditors shall maintain confidentiality in the course of undertaking their work and shall use such information with discretion and only in so far as, it is relevant to reach an internal audit opinion.

39. Risk Management and internal control

The Chief Registrar shall develop for the Fund —

- (a) risk management strategies, which include fraud detection and prevention mechanisms; and
- (b) a system of risk management and internal control that builds robust business operations.

40. Notification of incidences of fraud, material breach etc to Chief Justice

The Head of the Internal Audit shall as soon as is practicable notify the Chief Justice and the Audit Committee upon identification of indications of fraud, material breaches and wasteful expenditure in the management of the Fund.

41. Report to Chief Registrar on findings and recommendations

(1) The findings and recommendations arising from each internal audit assignment on the Fund shall be promptly reported to the Chief Registrar and the Chief Justice.

(2) The final internal audit report on each audit assignment, including the actions taken by the Chief Registrar shall be reported to the Chief Justice and the Audit Committee.

42. Implementation of the recommendations of audit reports

(1) The Chief Registrar shall be responsible for the implementation of the recommendations made in the audit reports on the Fund.

(2) The Chief Registrar shall within fourteen days of receipt of the audit report on the Fund develop the response and action plan which shall be submitted to the Chief Justice and the Audit Committee.

(3) The response and action plan shall contain a summary of the findings and recommendations of the audit report, the proposed corrective action to be undertaken and the timelines within which to implement the report.

(4) The Chief Justice and Audit Committee shall ensure that the response and action plan developed in sub-regulation (3) is implemented.

43. Quarterly and annual internal audit reports

(1) The Head of Internal Audit shall prepare and submit a quarterly internal audit report on the Fund to the Chief Justice, Chief Registrar and the Audit Committee within fourteen days of the end of the quarter.

(2) The Head of Internal Audit shall prepare and submit an annual internal audit report on the Fund to the Chief Justice, Chief Registrar and the Audit Committee at the end of each financial year.

PART VIII — MISCELLANEOUS**44. Guidelines, circulars, policies and procedure manuals etc**

The Chief Registrar shall issue guidelines, circulars, policies and procedure manuals and other documents to assist in the implementation of these Regulations.

45. Deposits

(1) The Chief Registrar shall provide rules and procedures for proper financial management of court deposits.

(2) Separate deposit accounts shall be operated by each Court Station.

(3) For purposes of these regulation, deposits are funds that are potentially revocable and refundable to the depositor and include: cash bail, surety, cash, bonds and cash that is suspected as being the proceeds from a crime such as cash seized from drug offenders, from persons entering the country with above the legal limits in cash.

(4) Refunds of deposits as may be ordered by the court must be processed as promptly as possible and take into account any timelines as may be issued by the courts.

(5) Any forfeiture collected as revenue under this sub regulation may be refunded as necessary Where the circumstances warrant such refund.

46. Regulations to prevail

These Regulations shall prevail in the case of any inconsistency between these Regulations and any other regulations in so far as they relate to the Judiciary Fund.

47. Reference to laws, regulations etc

Any reference to laws, regulations, policy and other professional guidelines in these regulations includes amendments and revisions made and applicable at the time.

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