

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 29

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (COFFEE CHERRY
ADVANCE REVOLVING FUND) REGULATIONS, 2020

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THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (COFFEE CHERRY ADVANCE REVOLVING FUND) REGULATIONS, 2020

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (Coffee Cherry Advance Revolving Fund) Regulations, 2020. Citation.

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

“Act” means the Public Finance Management Act, 2012;

“administrator” means the person designated as the Administrator of the Fund under regulation 8;

“advance payment rate” means the advance payment rates set out in regulation 13;

“affiliation” means registered with the New Kenya Planters Co-operative Union Limited;

“agent” means a person contracted by New Kenya Planters Co-operative Union Limited, for the purposes of—

- (a) processing loan applications;
- (b) disbursing or recovery of loans advanced; and
- (c) any other function assigned by the New Kenya Planters Co-operative Union Limited;

“Board” means the New Kenya Planters Co-operative Union Board managing the New Kenya Planters Co-operative Union Limited;

“coffee” means cherry, *buni* or parchment;

“co-operative society” has the meaning assigned to it under the Co-operative Societies Act; Cap 490.

“Fund” means the Coffee Cherry Advance Revolving Fund established under regulation 3;

“New Kenya Planters Co-operative Union Limited” means the body incorporated under the Companies Act, 2015; No.17 of 2015.

“small holder coffee estate” means a grower licensed by the county government with an area of land or parcels land under coffee not less than five acres and not more than twenty acres; and

“small holder coffee grower” means a coffee grower with an area of land or parcels of land under coffee of not more than twenty acres.

PART II—ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Coffee Cherry Advance Revolving Fund. Establishment of The Fund.
4. The object and purpose of the Fund shall be to provide affordable, sustainable and accessible cherry advance to smallholder coffee growers and small holder coffee estates. Object and purpose of the Fund.
5. The Fund shall consist of— Sources of the Fund.
- (a) monies appropriated by Parliament for purposes of the Fund;
 - (b) recoveries for administration costs relating to coffee cherry advance by Fund;
 - (c) grants, donations, bequests or other gifts made to the Fund;
 - (d) monies from any other source approved by the Cabinet Secretary; and
 - (e) income derived from investment of surplus funds.
6. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established. Expenditure of the Fund.
- (2) The expenditure on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator at the beginning of every Financial Year and approved by the Board.
- (3) Any revision of the approved work programmes and of any cost estimates shall be approved by the Board.

PART III—MANAGEMENT OF THE FUND

7. The functions of the Board with regards to this Fund shall be to— Functions of The Board.
- (a) oversee the administration of the Fund;
 - (b) develop policies relating to the general administration and management of the Fund;
 - (c) develop policies and procedures relating to application, disbursement and recovery of coffee cherry advances;
 - (d) develop a standard coffee advance agreement;
 - (e) approve the opening and closing of bank accounts in accordance with the Act;
 - (f) receive, review and approve the annual estimates of revenue and expenditure of the Fund and submit to the Cabinet Secretary responsible for the matters relating to co-operatives for concurrence and submit to the Cabinet Secretary for approval;

- (g) oversee the monitoring and evaluation of the programmes and activities of the Fund;
- (h) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (i) consider, review and approve the annual financial and non-financial statements of the Fund prepared in accordance with the Act in the format prescribed by the Public Sector Accounting Standards Board for submission to the Auditor General with a copy to the National Treasury, Commission for Revenue Allocation, and Controller of Budget;
- (j) consider, review and approve policies on the management of assets, equipment and all properties under the Fund;
- (k) consider, review and approve the investment policies for the investment of surplus funds;
- (l) receive, review and approve reports on the performance of the Fund;
- (m) decentralize its services, in so far as practically possible, to the coffee growing areas;
- (n) consult with the Cabinet Secretary on matters relating to the administration of Fund; and
- (o) perform any other functions that shall be assigned by the Cabinet Secretary.

8. (1) The Cabinet Secretary shall designate in writing, the Administrator of the Fund, in accordance with section 24(5) the Act.

Administrator of
the Fund.

- (2) The Administrator shall exercise the following functions—
- (a) supervise and control the administration of the Fund;
 - (b) develop a predictable, transparent and accountable financial internal control systems for the Fund;
 - (c) prepare estimates of annual revenue and expenditure of the Fund relating to its obligations and operational expenses and submit it to the Board for adoption;
 - (d) cause to be established proper systems of control and oversight under the provisions of the Act;
 - (e) consult and advise the Board on matters relating to the administration of the Fund;
 - (f) consult and advise with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
 - (g) prepare non-financial performance report of the Fund and submit it to the Board for adoption;
 - (h) be the custodian of the properties, assets and equipment of the Fund;

- (i) open individual loan ledger accounts for each loan approved by the Board;
- (j) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;
- (k) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of account relating to the Fund in such form as the Public Sector Accounting Standards Board established under the Act; and
- (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.

PART IV—OPERATION OF THE FUNDS

9. (1) A small holder coffee estate or small holder coffee grower shall be eligible to benefit from the Fund if that person is — Eligibility.

- (a) a citizen of Kenya; and
- (b) a member of a registered coffee co-operative society; or
- (c) affiliated to New Kenya Planters Co-operative Union Limited.

(2) In addition to the eligibility criteria set out in sub-regulation (1), a person desirous of accessing the monies in the Fund shall apply for the coffee advance and meet the following conditions—

- (a) in the case of a member of a registered coffee co-operative society, have—
 - (i) a national identity card or passport; and
 - (ii) a membership card of a co-operative society;
- (b) in the case of a smallholder coffee estate, who is affiliated to New Kenya Planters Co-operative Union Limited, have—
 - (i) a national identity card or passport; and
 - (ii) a membership card of the New Kenya Planters Co-operative Union Limited.

10. (1) A person who meets the criteria and conditions set out in regulation 9 shall— Application procedure.

- (a) in the case of a member of a registered coffee co-operative society, apply in the manner set out in Form 1A of the Schedule; and
- (b) in the case of a smallholder estate affiliated to New Kenya Planters Co-operative Union Limited, apply in the manner set out in Form 1B of the Schedule.

(2) The Board may provide further policies on the application procedure.

11. (1) The Board shall provide thresholds for coffee advances which may be approved by the Administrator. Coffee advance approval thresholds.
- (2) Any coffee advances approved under sub-regulation (1) shall be tabled by the Administrator in the subsequent meeting of the Board.
12. (1) Upon receipt of an application the Administrator shall evaluate the application to ensure compliance with these Regulations and coffee advance evaluation procedures approved by the Board. Evaluation of applications.
- (2) The Administrator shall, after evaluation of the application in sub-regulation (1), make recommendation to the Board to either approve or reject the application.
- (3) The Administrator shall process the applications on a first come first serve basis.
- (4) Where the Board rejects an application under these Regulations the Board shall give reasons for such decision within fourteen days of such decision.
- (5) An applicant whose application has been rejected may re-submit the application upon fulfillment of the requirements set in these Regulations.
- (6) Any decision of the Board shall be communicated to the applicant within fourteen days from the date of the decision of the Board.
- (7) Any applicant who is dissatisfied with the decision of the Board to reject his application for a coffee advance may apply to the Board for review of the decision.
13. (1) A member of a registered cooperative society or a smallholder estate affiliated to New Kenya Planters Co-operative Union Limited shall be advanced— Coffee advance payment rate.
- (a) forty per-centum of the prevailing average sales price at the Coffee Exchange;
- (b) twenty shillings per kilogram of cherry delivered; or
- (c) forty per-centum of the payment rate to members by a co-operative society for the immediate past crop year.
- (2) The Cabinet Secretary may review the rates provided under sub regulation (1) upon the recommendation of the Board.
14. (1) The Board shall develop the procedures for disbursement of approved coffee advances under these Regulations. Coffee advance disbursement procedure.
- (2) The Administrator shall inform—
- (a) the applicant; and
- (b) the registered coffee co-operative society,
- of approved coffee advances of successful applicants under them within fourteen days from the date of approval.
- (3) The Board shall disburse the approved funds directly to the bank account of the successful applicant using the details provided by the applicant in application form.

15. (1) Any coffee advance shall attract an administration cost of three per centum of each amount advanced. Recovery of administration costs.
- (2) The administration cost shall be met by the applicant and be deducted from the coffee advance.
16. (1) The Board shall develop procedures for recovery of coffee advances. Recovery mechanism.
- (2) The Board may appoint agents for purposes of recovery of the coffee advances in accordance with the procedures developed under sub-regulation (1).
- (3) The coffee advance shall be a first charge on the applicant's sale proceeds for coffee.
- (4) The applicant may repay the coffee advance through alternative sources of income in accordance with the procedures developed under sub-regulation (1).
- (5) Notwithstanding sub-regulation (4), the coffee advance shall be recovered after the sale of coffee.
- PART V—FINANCIAL PROVISION**
17. (1) The Administrator shall cause accounts in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with the Act and any Regulations made thereunder. Bank accounts for the Fund.
- (2) All moneys payable into the Fund shall be received into the bank accounts of the Fund.
- (3) The Fund's bank accounts shall be operated by the Administrator and two other persons nominated by the Administrator, and approved by the Board.
18. The Administrator shall ensure that no bank account of the Fund is overdrawn. Overdrawn accounts.
19. (1) The Board shall ensure that in any financial year expenditure from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year. Expenditure of the Fund.
- (2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.
20. Withdrawals from the Fund shall only be for purposes of promoting the objects and purpose for which the Fund is established and in accordance with the approved estimates of revenue and expenditure. Withdrawals from the Fund.
21. The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable. Financial and procurement Regulations
22. (1) The Board may with the consent of the Cabinet Secretary invest any of its surplus funds in Government securities. Investments of the Fund.

(2) The income derived from the investment of surplus funds under sub-regulation (1) shall be a source of the Fund.

23. (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) coffee advances;
- (c) monies for the administration expenses of the Fund; and
- (d) the payment of the allowances of the Board in respect to oversight of the Fund.

24. The Administrator shall publish and publicize all reports of the Fund approved by the Board in accordance with the Act.

Miscellaneous disclosures.

25. (1) The Administrator shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit them to the Board for approval.

Quarterly reports.

(2) Upon approval, under sub-regulation (1), the Administrator shall submit the report to the National Treasury.

26. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

Accounts of the Fund.

(2) Within a period of three months from the end of each financial year, the Administrator shall submit to the Auditor-General with a copy to the National Treasury, Commission on Revenue Allocation and Controller of Budget the financial and non-financial statements of the Fund in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act.

27. The accounts submitted under regulation 26 shall be audited by the Auditor General in accordance with the Constitution, the Act and the Public Audit Act.

Audit of accounts.

28. The Board shall prepare annual performance report and submit to the Cabinet Secretary responsible for matters relating to Co-operatives.

Annual performance report.

PART VI—GENERAL PROVISIONS

29. (1) The winding up of the Fund shall be in accordance with the provisions of the Act and the Regulations made on winding up of the Fund.

Winding up of the Fund.

(2) The Administrator shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government.

(3) The Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly.

(4) Assets other than cash of the Fund shall be transferred to the accounting officer responsible for matters relating to co-operatives.

(5) The Cabinet Secretary shall submit a final statement of accounts to National Assembly and to the Auditor-General for audit within six months from the date of the decision to wind up the Fund.

30. (1) A person who fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million Kenya shillings, or to both.

Offences and penalties.

(2) A person who misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or to both.

31. Pursuant to section 12(2)(k) of the Act, the Cabinet Secretary may issue guidelines for the better administration of the Fund.

Guidelines.

32. The Public Finance Management (Coffee Cherry Advance Revolving Fund) Regulations, 2019 are revoked.

Revocation of L.N. No. 201 of 2019.

<p>I authorise that the cherry advance be recovered from the proceeds of my coffee sales </p> <p>DECLARATION</p> <p>I certify that the above information is correct to the best of my knowledge and belief.</p> <p>Signature.....Date</p> <p style="text-align: center;">PART B</p> <p>Recommendation by Society</p> <p>I certify that the above information is correct to the best my knowledge and belief</p>			
<p>Authorised officers(s)</p> <p>CEO/Manager - Name in Full</p> <p>(Society Registration NO.....CS NO.....(attach certificate of registration)</p> <p>Signature</p> <p>Date</p> <p>Chairman - Name in Full</p> <p>Signature</p> <p>Date</p> <p> </p> <p>OFFICIAL STAMP /SEAL</p> <p> </p>			
<p>FOR OFFICIAL USE</p>			

REVIEWED BY FUND SECRETARIAT	
Name in Full	
Signature	
Date	
Comments if Any.....	
.....	
RECOMMENDED/NOT RECOMMENDED BY ADMINISTRATOR	
Name in Full	
Signature	
Date	
Comments if any.....	
.....	
APPROVED/NOT APPROVED BY THE BOARD Minute No.	
Name in Full	
Signature	
Date	

FORM 1 B.

(r.10 (1)(b))

**APPLICATION FORM FOR COFFEE ADVANCE BY A SMALL HOLDER ESTATE
AFFILIATED TO NEW KENYA PLANTERS COOPERATIVE UNION**

PART A	
1. Personal particulars	2. Estate Details
Full Name	Name of Estate
Gender Male Female	(attach copy of valid licence)
ID.NO..... (attach copy)	County.....
	Sub County.....
	Ward.....
Postal Address	Growers Code.
Tel	
Email	

	<p>Current Parchment production in (Kg)</p> <p>Delivery 1</p> <p>Delivery 2</p> <p>Delivery 3</p> <p>Delivery 4</p> <p>Total</p> <p>Record of previous deliveries and payment rate for past 2 years.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Year</th> <th style="width: 40%;">1</th> <th style="width: 50%;">2</th> </tr> </thead> <tbody> <tr> <td>Delivery (kg)</td> <td></td> <td></td> </tr> <tr> <td>Payment rate (KES/Kg)</td> <td></td> <td></td> </tr> <tr> <td>Total amount paid (KES)</td> <td></td> <td></td> </tr> </tbody> </table>	Year	1	2	Delivery (kg)			Payment rate (KES/Kg)			Total amount paid (KES)						
Year	1	2															
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Payment rate (KES/Kg)																	
Total amount paid (KES)																	
<p>Bank /FOSA account details (attach copy of the Bank Card Plate) OR Certificate from the Bank showing Account holder particulars</p> <p style="margin-left: 20px;">Name A/C.....</p> <p style="margin-left: 20px;">Bank</p> <p style="margin-left: 20px;">Branch</p>																	
Farm Records																	
<p>i. Acreage under coffee.....</p> <p>ii. No. of Trees</p> <p>iii. Variety</p>																	
<p>Other Incomes</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Source</th> <th style="width: 50%;">Amount (KES)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Source	Amount (KES)							<p>Other Debts</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Institution</th> <th style="width: 50%;">Amount (KES)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Institution	Amount (KES)						
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PART B
<p>Recommendation by the Administrator I certify that the above information is correct to the best my knowledge</p>
<p>Authorised officers(s) Administrator - Name in Full (New Kenya Planters Cooperative Union Licence No..... (attach copy of licence) Board minute number..... Date..... Signature Date Chairman - Name in Full Signature Date</p>
<p>OFFICIAL STAMP /SEAL</p>
<p>FOR OFFICIAL USE REVIEWED BY FUND SECRETARIAT Name in Full Signature Date Comments if any.....</p>
<p>RECOMMENDED/NOT RECOMMENDED BY ADMINISTRATOR Name in Full Signature Date Comments if any.....</p>
<p>APPROVED/NOT APPROVED BY THE BOARD Minute No. Date..... Name in Full Signature Date</p>

Dated the 3rd March, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury & Planning.