

(Lamu County Legislative Supplement No. 1)

LEGAL NOTICE NO. 1

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 116 (1) of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance, Budget, Strategy and Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (ASSEMBLY MORTGAGE (MEMBERS) SCHEME FUND) REGULATIONS, 2023

Citation

1. These Regulations may be cited as the Public Finance [Assembly Mortgage (Members) Scheme Fund] Regulations, 2023.

Interpretation

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

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

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

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

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

“Fund” means the Assembly Mortgage Scheme Fund established under the Government Financial Management (Assembly Mortgage Scheme Fund) Regulations, 2023;

“Member of the Scheme” means a Member and Staff of the County Assembly;

“Officer Administering the Fund” means the Clerk of the County Assembly;

“Property” means a residential house purchased through a loan from the Fund and includes the land purchased under loan from the Fund on which such house is to be developed;

“valuer” means a person registered as a valuer under the Valuers Act (Cap. 532).

Establishment of the Fund

3. The Assembly Mortgage Scheme Fund is established under the Public Finance Management (Lamu County Assembly Mortgage Scheme Fund) Regulations, 2023.

Object and Purpose of the Fund

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase, development, renovation or repair of residential property by members of the Scheme.

Capital of the Fund

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

(2) Assembly may appropriate additional monies to the Fund.

(3) The Fund shall be administered as a special account in the Assembly and shall be operated by the officer administering the Fund.

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

The Loans Management Committee

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

- (a) the Speaker of the Assembly shall be the chairman;
- (b) two other members of the Board, who are Members of the Assembly;
- (c) the Deputy Speaker of the Assembly;
- (d) the chairman of the County Budget and Appropriations Committee;
- (e) the Clerk to the County Assembly or the Deputy Clerk to the Assembly.

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

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

- (a) process applications for loans in accordance with the existing conditions of borrowing;
- (b) liaise with a housing company (if any) to set up a revolving fund for the disbursement of the loans; and
- (c) supervise the day-to-day running of the Fund.

(4) The meetings of the Committee shall be convened by the chairman or, in the absence of the chairman, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(5) The quorum for a meeting of the Committee shall be the chairman and two members.

Board May Appoint Mortgage Institution

Utilization of Loan Monies

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

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family.

(3) A loan for the development of residential property may be granted at the discretion of the Committee—

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

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

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

Disbursement of Loans for Development

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

(a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and

(b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

Application for a Loan

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

(a) copies of the designs of the proposed residential property duly approved by the relevant authority within whose area it is to be situated;

(b) bills of quantities in respect of the proposed development, renovation or repair;

(c) an official search of the title to the property intended to be purchased;

(d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees within sixty (60) days upon submission of the application.

(3) Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the colony of that borrower.

(4) All legal transactions in respect of the property being purchased conducted by an advocate appointed by the Board.

Leasehold Property

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

Maximum Loan Disbursement

12. (1) The maximum loan to be granted under these Regulations to a member of the Scheme shall be a sum equivalent to the member's net emoluments at the date of application multiplied by the number of months remaining for the life of that Assembly.

Provided that a loan granted to a member of the Scheme under these Regulations shall not exceed the sum of three million shillings.

(2) A member of the Scheme shall be required to give prior authority in writing for pension dues to be utilized to clear any outstanding debt in case the member is absent from an assembly seat before fully repaying the loan.

(3) A loan granted to a borrower under these Regulations shall be funded at an interest rate of—

- (a) ninety per centum of the value of the property, where such property is situated in Nairobi; and
- (b) eighty per centum of such value where the property is situated in any other area, and the borrower shall be required to deposit the balance thereof into the Fund.

(4) Subject to this regulation, a member of the Scheme shall be eligible to borrow the maximum amount of loan specified under sub-regulation (1) in each assembly term, to be accessed by the member in a maximum of two disbursements in that term.

Repayment of Loan

13. A loan granted under these Regulations shall be fully repaid at the expiry of the term of that Assembly.

Interest on Loans

14. (1) The interest chargeable on a loan shall be three per centum per annum on a monthly reducing balance and this rate may be reduced from time to time at the discretion of the Board.

(2) A mortgage institution appointed under regulation 7 to administer the Scheme may charge an interest of not more than three per centum to cover management costs.

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

Lien

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Board;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Board; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the Board to sell the property in case of default in payment.

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

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

- (a) ensure that the property is used for residential purposes only;
- (b) maintain the property in a satisfactory state of repair; and
- (c) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Board.

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

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

Mortgage Insurance

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Board, the cost of which shall be paid out of the Fund and debited in such borrower's account.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Default in Repayment

17. The Board may call in a loan and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the mortgage instrument.

Administration of the Fund

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

- (a) supervise and control the administration of the Fund;
- (b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;

income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act, 2012;

- (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and
 - (f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.
- (2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Responsibilities of Mortgage Institution

19. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be –

- (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
- (b) to charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
- (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
- (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and
- (f) upon default, to call in the loan and on behalf of the Board sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

Supplementary Terms

20. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Board and in the contract between the mortgage institution and the Board.

- (2) Subject to these Regulations, the Board shall issue guidelines on –
 - (a) the purchase and development of land and residential properties under these Regulations;
 - (b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and
 - (c) such other matters as may be necessary for the proper management and administration of the Fund.

Dated the 10th May, 2023.

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 116 (1) of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance, Budget Strategy and Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (ASSEMBLY CAR LOAN (MEMBERS) SCHEME FUND) REGULATIONS, 2023

Citation

1. These Regulations may be cited as the Public Finance [Assembly Car Loan (Members) Scheme Fund] Regulations, 2023.

Interpretation

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

“Board” means the County Assembly Service Board established under Section 1 of the County Government Act of 2012;

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

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

“Fund” means the Assembly Car Loan Scheme Fund established under the Public Finance Management (Members of the County Assembly Car Loan Scheme Fund) Regulations, 2014;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee;

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

“officer administering the Fund” means the Clerk of the County Assembly.

Establishment of the Fund

3. The Assembly Car Loan Scheme Fund established under the Public Finance Management (Member of the County Assembly Car Loan Scheme Fund) Regulations 2014.

Object and Purpose of the Fund

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase of vehicles by members of the Scheme.

5. (1) The initial capital of the Fund shall consist of the monies standing in credit of the account on the date of the coming into operation of these Regulations. (2) The Assembly may appropriate additional monies to the Fund. (3) The Fund shall be administered as a special account in the Assembly Fund and shall be operated by the officer administering the Fund.

The Loans Management Committee

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

- (a) the Speaker of the Assembly shall be the chairman;
- (b) two other members of the Board, who are Members of the Assembly;
- (c) the Deputy Speaker of the Assembly;
- (d) the Chair of the County Budget and Appropriations Committee;
- (e) The Clerk to the County Assembly or Deputy the Clerk to the Assembly.

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

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

(4) The quorum for meetings of the Committee shall be the chairperson and two members.

(5) The Committee shall consider and may approve the loan applications presented by the officer administering the Fund.

Operation of the Fund

7. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall present to the officer administering the Fund a duly completed hire purchase proposal form in such form as the Management Committee may prescribe.

(2) The officer administering the Fund shall satisfy himself of the applicant's financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) If the Committee approves the application, the applicant shall enter into a hire purchase agreement in such form as the Committee may prescribe.

Conditions for Disbursement of Funds, L.N. 139/2003

8. (1) A loan approved under regulation 7 shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Management Committee.

Temporary Release of Log-Book

9. (1) A log-book kept in custody by the officer administering the Fund may be temporarily released to a member of the Scheme upon application in writing to the officer administering the Fund for purposes of renewal by that member of the necessary licences.

(2) A log-book released under paragraph (1) shall be returned to the officer administering the Fund within seven working days from the date of such release.

(3) The officer administering the Fund shall acknowledge receipt of the log-book in writing.

Loan Amounts

10. (1) The loan amount that a member of the Scheme may receive shall be the value of the vehicle that the member of the Scheme proposes to purchase subject to the maximum amount of two million shillings.

(2) For the purpose of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the body known as the Automobile Association of Kenya, or the Government department dealing with such matters.

(3) Notwithstanding the provisions of paragraph (1), there may be advanced from the Fund to a member of the Scheme an additional loan not exceeding ten per cent of the value of the vehicle purchased by the member of the Scheme to cater for an overhaul of the engine of the vehicle.

(4) No member of the Scheme shall receive a loan the repayment of which shall result in salary deductions exceeding thirty per cent of the monthly emoluments of the member of the Scheme.

Interest Rate

11. (1) A loan granted to a member of the Scheme under these Regulations shall carry an interest rate of three per cent per annum.

(2) The interest charged under paragraph (1) shall be utilized to defray the administrative expenses of the Fund.

Repayment Period

12. A loan advanced under these Regulations shall be recoverable within the contract term of the Member irrespective of whether the vehicle purchased is new or used.

Insurance

13. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Scheme.

(2) Where a member of the Scheme is unable to raise the funds required for the initial insurance premium, such funds may be advanced from the Fund subject to an approved limit, but subsequently annual premiums shall be paid by the member of the

(4) Every loan granted under these Regulations shall be insured for the benefit of the member of the Scheme and the premium in respect thereof shall be debited to the account of the member of the Fund.

Loan Discharge

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

(2) The loan discharge certificate shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the vehicle pursuant to regulation 8.

Administration of the Fund

15. (1) The officer administering the Fund—

- (a) shall supervise and control the administration of the Fund;
- (b) may impose conditions on the use of any moneys in the Fund and may also impose any reasonable restriction or other requirement concerning such use;
- (c) shall cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) shall prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, and such details as the Commission may from time to time direct in accordance with the Public Finance Management Act;
- (e) shall furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Controller and Auditor-General.

(2) Every statement of account prepared under this regulation shall show the details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Dated the 16th May, 2023.

MOHAMED MBWANA,
*County Executive Committee Member for Finance,
Budget, Strategy and Economic Planning*