

**LEGAL NOTICE NO...………………….**

**THE PUBLIC FINANCE MANAGEMENT ACT**

***(****Cap. 412A****)***

**IN EXERCISE** of the powers conferred by section 205 of the Public Finance Management Act, the Cabinet Secretary for the National Treasury and Economic Planning, in consultation with the Intergovernmental Budget and Economic Council, makes the following Regulations—

**THE GOVERNMENT INVESTMENT REGULATIONS, 2024**

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| **PART I— PRELIMINARY** | |
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| Short title. | 1. These Regulations may be cited as the Government Investment Regulations, 2024. |
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| Interpretation. | 1. In these Regulations, unless the context otherwise requires— |
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| Cap. 412A. | “Act” means the Public Finance Management Act; |
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|  | “bailout” means financial support provided to a failing entity by the government by way of funding or guarantee; |
|  | “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;  “credit enhancement mechanism” means credit support that the borrower may provide to raise the creditworthiness of a borrower or a project;  “direct loan” means a loan procured by a State Corporation on the strength of its balance sheet from a commercial bank; |
|  | “divestiture” means disposal of government or its entities shareholding in a company; |
|  | “governing body” means a body or a person managing a public entity and includes a Commission, Board of Trustees, Board of Directors or Management Board; |
|  | “government investment” means public expenditure in the form of share capital, equity, loans, grants, subsidies, bailouts and guarantees provided by the government to state corporations, government linked corporations, private enterprises and subscriptions to international bodies; |
|  | “government investment enterprise” means the state corporations, government linked corporations, private enterprises and international bodies; |
|  | “government -linked corporation” has the same meaning assigned to it under the Act; |
|  | “guarantee” has the meaning assigned to it under the Constitution;  “grant” has the meaning assigned to it under the Act;  “international bodies” means international organizations that the National Government has equity subscription; |
|  | “invest” has the same meaning assigned to it under the Act;  “loan” means direct loan, on-lent loan or government loan |
|  | “on-lent loan” means a loan from a financier that the national government lends to an entity;  ‘government Loan” means a national government loan that the national government lends to an entity. |
|  | “on-lent agreement” means a national government loan agreement between the National Treasury and a beneficiary entity in respect of a national government loan from a financier;  “restructuring” means a process by which a state corporation in distress undergoes changes in the financial, operational, governance or legal framework to keep it as a going concern; |
|  | “pending bills” means the undisputed invoices due for payment and are outstanding for more than a state corporation’s credit period; |
|  | “private enterprises” means a private entity into which the government has provided funding or guarantee; and |
|  | “System” means Management Information System established under regulation 16. |
| Objects. | 1. The object of these Regulations shall be to— |
|  | 1. provide a framework for the efficient and effective administration and management of government investments; 2. provide for the role of the National Treasury in decision making and oversight relating to government investments ; |
|  | 1. provide for oversight roles of the Ministry responsible for a state corporation; 2. provide a framework for reporting on financial matters by a state corporation and government linked corporation;      1. provide for an effective coordination arrangement on financial oversight of State Corporations by the National Treasury, the line Ministries and Governing bodies.; |
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|  | 1. assign responsibilities for monitoring of financial and operational oversight of state corporations; and |
|  | 1. provide criteria for making decisions on government investments. |
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| Application. | 1. These Regulations shall apply to— 2. state corporations; |
|  | 1. government linked corporations; |
|  | 1. private enterprise; and 2. international bodies |
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| **PART II— INSTITUTIONAL FRAMEWORK FOR GOVERNMENT INVESTMENTS** | |
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| Responsibilities of Department responsible for Investments | 1. The functions of the National Treasury Department responsible for government investments shall be to— |
|  | 1. ensure the safeguard of the financial interest of Government in the existing and prospective investments; 2. Identify State Corporations for privatization and prepare privatization programme for consideration by the Cabinet Secretary before submission to the Cabinet for approval; 3. develop strategic objectives and policies relating to the financial oversight and management of state corporations; 4. review and evaluate financial reports of State Corporations, government linked corporations, private enterprises and international bodies; 5. monitor the financial and operational performance of State Corporations based on financial and operational key performance Indicators including investments made by state corporations; 6. identify, quantify, monitor, report, manage and mitigate fiscal risks emanating from state corporations, government linked corporations, private enterprises and international bodies; 7. monitor state corporations approved budget execution through quarterly financial reports; 8. maintain an updated information of government shareholding in enterprises including outstanding loan guarantees, records of past and prospective dividends, interest payments and debt payments; 9. coordinate representation of Government stockholding and creditor interests at the state corporations and government linked-corporations governing body: 10. provide support and coordinate, restructuring and reforms of State Corporations including Government divestiture and privatization, mergers and acquisitions; 11. prepare privatization programme for consideration by the Cabinet Secretary before submission to the Cabinet for approval; 12. spearhead and coordinate National Government strategic projects and investment initiatives; 13. coordinate revenue collection from state corporations, government linked corporations, private enterprises and international bodies including loan and interest redemption, dividends and directors’ fees; 14. recommend approval of state corporations’ budgets and other strategic undertakings; 15. conduct regular reviews of state corporations to assess the relevance of the mandate and the justification for their continued existence; 16. develop strategic objectives and policies relating to financial oversight and management of State Corporations; 17. review and analyse borrowing proposals by State Corporations, government linked corporations and private enterprises; 18. prepare on-lending and on-granting agreements for state corporations to implement strategic investments for Government; 19. reconcile and prepare the annual statement of outstanding government on-lent loans, government loans, direct loans and guarantees. 20. prepare a consolidated report summarising the extent of national government involvement or investment in, or funding of, all state corporations and government-linked corporations for that financial year; and 21. Prepare a report on assessment of the continued government involvement or investment in or funding of a state corporation or a government linked corporation |
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| |  |  | | --- | --- | | Responsibilities of parent ministry. | 1. (1) The Ministry responsible for a state-corporation shall— | |  | 1. be responsible for economic and financial justifications of investment decisions requiring government funding; 2. approve budget proposals by state corporation and submit to the Cabinet Secretary; 3. ensure that approved budgets are fully funded; 4. review and submit restructuring proposals by state corporations to the Cabinet Secretary; | |  | 1. ensure that an on-lent agreement and an on-grant agreement has been executed before disbursement of funds; 2. disburse funds to the state corporations in accordance with on-lent or on-grant agreement; 3. maintain an updated record of all government investments by state corporations and follow-up on repayment of the principal and interest on the loans when they fall due; 4. prepare financial and non-financial reports on State Corporations under them and submit to the Cabinet Secretary; and 5. prepare statements of the amount outstanding in respect of the loans issued and the guaranteed loans to state corporations and submit to the Cabinet Secretary and the Auditor-General within thirty days after the end of the financial year.   (2) The statements referred to under sub-regulation (1)(g) shall contain the information specified in the First Schedule. |  |  |  | | --- | --- | | Responsibilities of the governing body of a state corporation. | 1. The governing body of a state corporation shall— 2. approve annual budgets before submission to the line ministry ; 3. set and oversee the overall strategy and approve financial and operational policies and procedures of the organization; 4. provide financial oversight of the state corporation; 5. monitor budget execution; and 6. resolve audit issues raised by the Auditor-General. |   **PART III- PROCEDURE FOR SUBMISSION FOR RESTRUCTURING PROPOSALS** | |
| Restructuring of a state corporation. | 1. (1) The governing body of a State Corporation shall upon monitoring a state corporation performance identify when a state corporation requires restructuring.   (2) The proposal for restructuring shall be informed by the need for financial and operational sustainability of the state corporation. |
|  | (3) Where the governing body of a state corporation determines that the state corporation requires restructuring, it shall prepare and submit a restructuring proposal to the Ministry responsible for the state corporation. |
|  | (4) The Ministry responsible for the state corporation shall, in reviewing of the restructuring proposal submitted under sub-regulation (3), consider—   * 1. whether the proposed restructuring shall achieve the intended objective;   2. the financial implication of the proposed restructuring;   3. the ability of the Corporation to fund the proposed restructuring;   4. the support that may be required from the Government; and   5. the various options recommended by the state corporation.   and submit to the Cabinet Secretary with recommendations for consideration. |
|  | (4) The Cabinet Secretary shall, on review of the restructuring proposal submitted under sub-regulation (3), make recommendations to the Cabinet in accordance with section 88(2) of the Act. |
|  | (5) Notwithstanding the provisions of sub-regulation (1), the Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for a state corporation, recommend restructuring of a state corporation. |
| Restructuring of loans. | 1. (1) The governing body of a State Corporation shall, upon monitoring the performance of a loan determine when a loan requires restructuring based on the capacity of the State Corporation in meeting the loan repayment obligations.   (2) The proposal for restructuring of a loan shall be made to the Cabinet Secretary through the Ministry responsible for the state corporation.  (3) The proposal for a restructuring of a loan shall provide the following information—   1. the background of that loan; 2. the year of the loan; 3. the amount of money disbursed; 4. the repayment schedule; 5. outstanding loan; 6. the justification for the loan restructuring; and 7. any other relevant information. 8. The Cabinet Secretary shall cause a financial and operational review of a state corporation before making a decision on a loan restructuring. 9. In addition to a recommendation of a loan restructuring, the Cabinet Secretary may recommend a financial, legal or operational restructuring of a State Corporation if the restructuring will in the opinion of the cabinet secretary, result to financial viability of the State Corporation. 10. The National Treasury shall consider the request of the loan restructuring before submitting to the Cabinet for approval; and 11. Upon review of performance of a loan, the National Treasury or the line ministry may propose a loan restructuring. |
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| **PART IV—INVESTMENT DECISION** | |
| Consideration  for government investment decision. | 1. (1) The decision for government investment shall be guided by— 2. government policy; 3. social economic significance; 4. public interest; 5. strategic justifications. 6. The Cabinet Secretary shall specify the rate of financial and or economic return for investments decisions. 7. A state corporation intending to invest in a capital project shall ensure that the proposed project meets the requirements specified by the Cabinet Secretary under sub-regulation (2). 8. Where, the proposed project does not meet the requirements specified in sub-regulation (2), the state corporation shall provide a justification in terms of other criteria including socio-economic impact of the proposed project. |
| Share capital. | 1. (1) Where a state corporation intends to invest in share capital, the state corporation shall submit a business case to the Cabinet Secretary, through the Ministry responsible for the state corporation. 2. The Ministry responsible for the state corporation shall review the proposal and submit to the Cabinet Secretary for consideration and transmission to the Cabinet for approval. 3. The Cabinet secretary may initiate the process of investing in share capital by the National Treasury. 4. The investment in share capital by the National Treasury shall be approved by the Cabinet. |
| Subsidies and/ or bailouts. | 1. (1) A state corporation may submit a request for subsidies and bailouts with justifications to the Cabinet Secretary responsible for the state corporation. 2. The Cabinet Secretary responsible for the state corporation shall review the justification for the submitted request before forwarding to the Cabinet Secretary. 3. A request for bail out for entities that are not state corporations shall be submitted to the cabinet secretary 4. The Cabinet Secretary shall review a request for subsidies and/ or bailouts having taken into account the requirements in sub-section 10 of these Regulations. 5. A request for bailout shall be accompanied with a restructuring proposal   (6) The National Treasury Department responsible for government investments shall oversee the bailout and restructuring process |
| Grants  Loans | 1. (1) Grants from the Government or development partners to state corporations shall be extended for projects providing public services and stimulating economic development.   (2) All grants shall be extended through a Grant Agreement with compliance and reporting measures to ensure the grant is utilized for the intended purposes.  (3) Notwithstanding the provisions of section 13(1), Grant Agreement in respect of Government grants shall be applicable to Commercial State Corporations only  (4) Recipients of grants shall submit periodic reports to the National Treasury accounting for the utilization of the grant.   1. (1) In reviewing an application of a loan, the National Treasury shall take the following into account: 2. The purpose of the loan   (ii) The purpose of the loan shall meet the set criteria in the regulations;   1. The credit history of the applicant; and   iii. The ability of the borrower to repay the loan;  (2) In reviewing the ability of the borrower to repay the loan, the National Treasury may take into account any credit enhancement mechanism that the borrower may provide; and  3. all loans shall be done through a loan agreement |
| Subsidiary loan agreements. | 1. (1) All on-lent loans by the government shall be issued through a subsidiary loan agreement in the Form set out in the Second Schedule.   (2) The National Treasury shall enter into a subsidiary loan agreement in the case of on-lending arrangement with the recipient state corporation or a relevant beneficiary.  (3) The subsidiary loan agreement shall be prepared by the National Treasury Department responsible for Government Investments in accordance with the terms of the financing agreement between the Government of Kenya and financiers. |
| **PART V—THE GOVERNMENT INVESTMENTS MANAGEMENT INFORMATION SYSTEM** | |
| Management Information System. | 1. (1) The National Treasury Department responsible for Government Investments shall design and maintain an efficient, effective and reliable Management Information System.     (2) The System shall automate the government investment management process to enhance financial oversight of state corporations.  (3) The National Treasury Department responsible for government investments shall be responsible for the overall administration of the System.  (4) The submission, review, analysis and approval of budget estimates by state corporations shall be through the System.  (5) The financial and non-financial reporting by state corporations shall be through the System. |
| **PART VI—REPORT PROVISIONS** | |
| Reports. | 1. (1) A state corporation shall submit monthly statutory report to the Ministry responsible for the state corporation not later than ten days after the end of each month with the following information— 2. updated details of all bank accounts, including the balances in each bank account at the end of each month; and 3. pending bills broken down into their components: trade creditors, pensions, taxes, sacco deductions and other pending bills   (2) A State Corporation shall submit their Quarterly Financial Statements to the Ministry responsible for the state corporation not later than fifteen days after the end of each quarter, with the following information—   1. statement of financial performance, financial position and cash flow; 2. update of status of capital projects and capital items budgets; 3. status of investment of surplus funds for each state corporation; and 4. status on investment of income including dividends, Directors’ fees, surplus funds. 5. State Corporations shall upload an updated and audited financial report and any other statutory reports as the National Treasury may specify.   (4) a government linked corporation, a private enterprise and international bodies shall not later than six months after the end of each financial year submit audited financial report to the National Treasury |

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| FIRST SCHEDULE | |
| **PART A**  Information required for outstanding loans   1. The financier or lender. 2. Loan Reference number. 3. Identifier Number. 4. The recipient. 5. Purpose. 6. Project. 7. Principal Amount. 8. Accumulated Interest. 9. Interest paid. 10. Outstanding interest. 11. Type. 12. Amount paid. 13. Balance outstanding. 14. Terms of repayment and any other pertinent information.   **PART B**  Information for obligations guaranteed by the government     1. The organization to which the guarantee is given. 2. The nature of the obligation guaranteed. 3. The amount of guaranteed loan. 4. The contingent liability outstanding. | |
| **SECOND SCHEDULE** | |
| **SUBSIDIARY LOAN AGREEMENT** | |
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Information required for the Subsidiary Loan Agreement

1. Preamble
2. Definition of Terms
3. Project Description and Financing Modalities
4. Terms of the Subsidiary Loan
5. Modalities of Interest Charged
6. Loan Repayment Modalities
7. Taxes, Duties and Fees.
8. Disclosure of Information and Reporting Requirements.
9. Financial Covenants
10. Anti-Corruption Clauses
11. Institutional Arrangements
12. Disbursement and Utilization of Subsidiary Loan.
13. Remedies to the Government in case of Default on the part of the Borrowing Entity.
14. Amendments, Settlement of Disputes and Applicable Law
15. Effective and Termination of Subsidiary Loan Agreement
16. Miscellaneous Commitments
17. Confidentiality and Severability
18. Notices and Communications
19. Signatories