

Kakamega County Subsidiary Legislation 2018

THE PUBLIC FINANCE MANAGEMENT ACT (KAKAMEGA COUNTY SUGARCANE DEVELOPMENT FUND) REGULATIONS, 2018

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	<p style="text-align: center;">THE PUBLIC FINANCE MANAGEMENT ACT</p> <p style="text-align: center;">(No. 18, 2012)</p> <p>IN EXERCISE of the powers conferred by Section 116 of Public Finance Management Act, 2012, the Kakamega County Executive Committee Member for Finance makes the following regulations-</p> <p style="text-align: center;">PART I - PRELIMINARY</p>
Short title	1. These regulations may be cited as the Public Finance Management (Kakamega County Sugarcane Development Fund) Regulations, 2018.
Interpretation	2. In these regulations unless the context otherwise requires; ‘Accounting Standards Board’ means the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012; “County Revenue Fund Account” means the county revenue fund pursuant to Article 207 of the Constitution of Kenya, 2010; “Committee” means the Committee constituted under regulations 7. “County” means Kakamega County; “Executive Committee” means County Executive Committee pursuant to Article 179 of the Constitution of Kenya; “Executive Committee Member” means the County Executive Committee Member responsible for finance; "Fund" means the Kakamega County Sugarcane Development Fund established under regulation 4 “County Assembly” means County Assembly of Kakamega County;
Object and purpose	3. The object and purpose of these regulations is to; (a) provide for the establishment, administration, management of the Kakamega

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<p>The Fund.</p>	<p>County Sugarcane Development Fund;</p> <p>(b) create a revolving Fund to cushion sugarcane farmers against delayed payments by sugarcane millers so as to incentivise farmers to continue investing in sugarcane farming</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">THE FUND</p> <p>4. There is established a Fund known as Kakamega County Sugarcane Development Fund as a revolving Fund to provide funds to cushion qualifying farmers against delayed payments by sugarcane millers,</p>
<p>Sources of monies for the Fund.</p>	<p>5 (1) The sources of monies for the Fund shall include-</p> <ul style="list-style-type: none">a) money appropriated by the County Assembly;b) interest accruing from bank deposits in respect of the Fund;c) donations, grants and endowments; andd) money from any other legitimate sources. <p>(2) Any unused monies at the end of the financial year shall not be paid to the County Revenue Fund Account but shall be retained in the Fund and carried forward to the next financial year as provided for in section 116(3) of the Public Finance Management Act, 2012.</p> <p>(3) Notwithstanding sub-regulation (2) monies already committed shall be retained in the Fund but shall not form part of the annual allocation for the Fund.</p> <p>(4) Any unspent and uncommitted money at the end of the financial year shall be re-budgeted.</p>
<p>Expenditure of the Fund.</p>	<p>6 (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuant of the object and purpose for which the Fund is established.</p> <p>(2) The expenditure incurred by the Fund shall be on the basis of and limited to annual expenditure programmes and cost estimates which shall be prepared by the administrator of the Fund, and approved by the Implementation Committee</p>

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<p>Establishment of Implementation committee</p>	<p>established under Regulation 7 at the beginning of the financial year to which they relate.</p> <p>(3) Any revision of the approved annual estimates, and of any cost estimate, shall be approved the Implementation Committee and forwarded to the county Assembly for approval.</p> <p style="text-align: center;">PART III</p> <p style="text-align: center;">ADMINISTRATION OF THE FUND</p>
<p>Functions of the committee</p>	<p>7. There is established an Implementation Committee for the Fund which shall consist of -</p> <ul style="list-style-type: none">a) a chairperson with at least five years' experience in the sugar industry with a relevant degree from a recognized university appointed by the Governor;b) the chief officer responsible for agriculture;c) the chief officer responsible for finance;d) county attorney;e) a representative elected by farmers and appointed by the Executive Committee Member responsible for Agriculture ;andf) a representative elected by millers and appointed by the Executive Committee Member responsible for Agriculture ; andg) the director of Agriculture who shall be the administrator of the Fund and secretary of the committee. <p>8. (1) The Committee shall;</p> <ul style="list-style-type: none">a) receive records of all payments made to sugarcane farmers;b) maintain proper records of the Committee affairs and books of accounts;c) submit quarterly returns and reports of the Committee operations to the executive committee member responsible for Agriculture;d) be the custodians of all Committee assets and documentation;e) to receive any gifts, donations, grants or endowments made to the Fund;f) to prepare annual estimates and reports to the Executive Committee Member responsible for Agriculture;

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<p>Fund Administrator</p>	<ul style="list-style-type: none">g) not later than three months after the end of each financial year, cause to be prepared financial statement of the Fund and submit the same to the Auditor General;h) ensure that the earnings of ,or accruals to the Fund are retained in the Fund unless the Executive Committee Member directs otherwise;i) ensure that money held in the Fund ,including any earnings or accruals is spent only for the purposes for which the Fund is established;j) monitor by receiving reports from the Fund manager on a monthly basis indicating details of the farmers paid, value of sugarcane delivered by each farmer and the money paid to such farmer by the sugarcane miller;k) Continuously assess the impact of the Fund to the sugarcane industry and report on its viability and the need for review;l) monitor by receiving reports from the Fund manager on a monthly basis indicating details of revolving funds; andm) perform such other functions as the Committee may deem necessary for the proper discharge of its mandate.
<p>Functions of the fund administrator</p>	<p>9. The Executive Committee Member shall designate the County Director of Agriculture to be the Fund Administrator of the Fund.</p> <p>10. (1)The Fund Administrator shall-</p> <ul style="list-style-type: none">(a) prepare accounts for the Fund for each financial year.(b) not later than three months after the end of each financial year submit statements relating to the account to the auditor general(c) prepare quarterly financial statements for the Fund on financial and non-financial performance of the Fund.(d) present financial statements of the Fund to the County Assembly;(e) not later than fifteen days after the end of each quarter submit the quarterly

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	<p>report to the county treasury and a copy to the controller of budget;</p> <p>(f) Supervise and manage operations of the account.</p> <p>(g) ensure adequate budgetary provisions for the Fund; and</p> <p>(h) ensure the Fund balances are administered in accordance with the provisions of the Public Finance Management Act, 2012 and that the Fund balances are re-budgeted at the end of the financial year.</p> <p>(2) the accounts for the Fund and the annual financial statements relating to those accounts shall comply with accounting standards prescribed and published by the Accounting Standards Board prescribed from time to time.</p>
Management of the fund.	<p>11.(1) The Committee shall appoint a Fund manager through a service contract, memorandum of understanding, agreement or any other arrangement provided for by the Public Procurement and Disposal Act, 2015 to manage funds disbursed by the committee.</p> <p>(2) the Fund manager shall-</p> <p>(a) be a body corporate;</p> <p>(b) have technical capacity to manage funds;</p> <p>(c) have proven financial capacity and standing for a period of at least three years; and</p> <p>(d) demonstrable capacity in supply and sales of sugar and or sugarcane related products for a period of three years.</p>
Functions of fund manager	<p>12. The Fund Manager shall-</p> <p>a) open a special account into which money disbursed by the Fund administrator in accordance with the schedule provided by the miller will be received;</p> <p>b) pay farmers for sugarcane delivered in accordance with the payment schedule provided by the miller within three days of receipt of the money ;</p> <p>c) sell sugar received from the miller equivalent to money disbursed to</p>

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<p>Secretariat of the Fund</p>	<p>farmers and remit the proceeds to the Fund administrator monthly;</p> <ul style="list-style-type: none">d) submit to the Fund administrator farmers’ payment schedules received from the miller on a weekly basis;e) submit reports to the Fund Administrator for the amount of sugar supplied by the miller being equivalent to the amount paid as per the farmers payment schedule;f) pay into the account held by the Fund administrator the principal amounts received from the sugar sales net of agreed fees and submit reports of the sales and evidence of deposit to the Fund administrator;g) pay to the Fund administrator any interest on the accrued disbursement as may be agreed with the Implementation Committee;h) submit monthly, quarterly and annual financial and non-financial reports to the Fund administrator;i) perform any other function as may be agreed from time to time.
<p>Annual estimates</p>	<p>13. The Implementation Committee shall set up a secretariat of at least two public officers who may be seconded from the department of agriculture or other relevant department of the county or competitively recruited who shall ensure proper management of the Fund.</p> <p style="text-align: center;">PART IV- FINANCIAL PROVISIONS RELATING TO THE FUND</p> <p>14(1) Each financial year the Committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year in accordance with the provisions of the Public Finance Management Act.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and in particular shall provide for –</p> <ul style="list-style-type: none">(a) the operations of the Fund;(b) payment of allowances to members of the Committee;

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Accounts and audit	<p>(c) maintenance of assets of the Fund ; and</p> <p>(d) the creation of such reserves to meet future or contingent liabilities and in respect of such other matters as the Committee in consultation with the executive committee member may determine under these regulations.</p> <p>(3) The annual estimates shall be approved by the Committee and shall be submitted to the executive committee member for approval and after the executive committee member has given approval the Committee shall not increase any sum provided in the estimates without the consent of the executive committee member.</p> <p>(4) No expenditure shall be incurred for the purposes of the Fund except with the funds voted or appropriated by County Assembly.</p> <p>15. (1) The Committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund.</p> <p>(2) Within a period of three months after the end of each financial year ,the Committee shall submit to the Auditor General the accounts of the Fund in respect of that year together with-</p> <p>(a) a statement of income and expenditure of the Fund for that year; and</p> <p>(b) a statement of the assets and liabilities of the Fund for that financial year.</p> <p>(3) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act No. 34 of 2015 and the Public Finance Management Act.</p>
Meetings	<p style="text-align: center;">PART IV</p> <p style="text-align: center;">MISCELLANEOUS</p> <p>16. (1) The Fund administrator and Fund manager shall hold monthly meetings to review the progress and performance of the Fund.</p> <p>(2) The Implementation Committee shall meet quarterly in a meeting</p>

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<p>Allowances for committee members</p>	<p>convened by the chairperson.</p> <p>(3) Notwithstanding sub-regulation (2), the Fund Administrator may request for a special meeting of the Implementation Committee and the chairperson shall convene the meeting.</p> <p>(4) The chairperson shall convene and preside at every meeting of the Implementation Committee and in the absence of the chairperson, the Fund Administrator shall convene the meeting and the members present shall elect one of their number to preside.</p> <p>17. Members of the Committee shall be paid such allowances as may be determined by the executive committee in line with existing guidelines of the Salaries and Remuneration Commission.</p>
<p>Rules of procedure</p>	<p>18. (1) The Committee shall regulate and make its own rules of procedure.</p> <p>(2) To transact any business of the Committee at least four members and the Fund Administrator must be present.</p>
<p>Protection against personal liability</p>	<p>19. No matter or anything done by a member of the Committee or agent of the Committee shall, if the matter or thing is done bona fide for executing the functions, powers and duties of the Committee, render a member or agent personally liable to any action, claim or demand whatsoever.</p>
<p>Liability of the Fund for damages</p>	<p>20. The provisions of these regulations shall not relieve the Committee of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of or any power conferred by these regulations.</p>
<p>Removal from office</p>	<p>21. A member of the Implementation Committee under Regulation 7(a), (e) and (f) may be removed from office –</p> <ul style="list-style-type: none">a) for gross misconduct;b) violation of the Constitution or any other law;

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- c) mental or physical infirmity;
- d) on being declared bankrupt by a court of law;
- e) upon death;
- f) upon missing three consecutive meetings

PART V

WINDING UP OF THE FUND

Winding up of
the Fund

22. The Executive Committee Member may wind up the Fund with the approval of the County Assembly and upon winding up:

- a) The administrator of the Fund shall pay any amount remaining in the Fund into the County Revenue Fund Account;
- b) The Executive Committee Member shall with approval of County Assembly pay any deficit in the Fund from the County Revenue Fund Account;
- c) All assets of the Fund will be absorbed into the County assets.

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MEMORANDUM OF OBJECT AND REASONS

These regulations are intended to provide for better management of the Kakamega County Sugarcane Development Fund created as a revolving Fund to cushion sugarcane farmers against delayed payments by sugarcane millers and Provide for subsidised farm inputs to farmers and farmer organisations.

The regulations establish a legal framework for the administration, management and winding up of the Fund and are expected to encourage farmers to continue investing in the sugarcane sector besides generating gainful employment for the citizenry of the County. In addition the regulations are expected to guarantee accessibility and accountability for the Fund.

These regulations are organised into six parts covering the following provisions-

Part I provides for preliminaries including short title, interpretation, object and purpose as well as principles of the Fund.

Part II recognises the existence of the Fund and provides for the use of the funds while Part III provides for establishment of the necessary structures for the administration of the Fund.

Part IV provides for financial provisions relating to the funds and the corresponding, reporting and accountability.

Part V contains miscellaneous provisions including regulating of meetings, allowances for Committee members, rules of procedure, protection against personal liability, removal from office, Implementation as well as saving and transitional provisions.

Part VI provides for the winding up of the Fund.

Geoffrey Omulayi
County Executive Committee Member For Treasury And Economic Planning

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