

REGULATIONS

Amendment to Section 115(1) of the Water Act, Cap. 43

The powers and functions of the Fund shall be exercised and performed under the direction of a Board of Trustees from time to time appointed and holding office under a trust deed to be drawn by the Cabinet Secretary (add)and in accordance with Regulations as may be made by the Cabinet Secretary.

REPORTING REQUIREMENT

(Add) Section 116(4)

The Board shall, in every year, submit to the Cabinet Secretary and to the National Assembly, an annual report of the programmes and activities undertaken, relating to the implementation of this Act.

The Water Act, Water Sector Development and Conservation Fund (Trust Fund) Regulations, 2023

LEGAL NOTICE NO...

THE WATER ACT, 2016 (No. 43 of 2016)

IN EXERCISE of the powers conferred by Section 115(1) and 142 of the Water Act, 2016, 2014, the Cabinet Secretary makes the following Regulations—

WATER SECTOR DEVELOPMENT AND CONSERVATION FUND (TRUST FUND) REGULATIONS, 2023

Citation.

1. These Regulations may be cited as the Water Sector Development and Conservation Fund (Trust Fund) Regulations, 2023.

Interpretation.

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

“Accounting Standards Board” has the meaning assigned to it under Section 2 of the Public Financial Management Act, 2012;

“Act” means the Water Act, 2016;

“administrator of the Fund” means the Board of Trustees as established 115 of the Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water
and

“Fund” means the Water Sector Development and Conservation Fund (Trust Fund), 2023 as established under Section 113 of the Act.

Objects and Purpose of the Fund.

3. (1) The object and purpose of the Fund is to mobilize and provide conditional and unconditional grants and loans to counties, water sector entities, marginalized areas and other areas considered by the Board of Trustees to be underserved, for purposes of financing the development and management water and sanitation infrastructure, water services and resources, research and capacity development, including—

(a) community level initiatives for the sustainable management of water resources;

(b) development of water services in rural areas considered not to be commercially viable for provision of water services by licensees;

(c) development of water services in the under-served, poor urban areas; and

(d) research activities in the area of water resources management and water services, sewerage and sanitation.

(2) Without prejudice to the generality of sub regulation (1) above, and subject to the Act, the object and purpose of the Fund, the Fund can make payments for—

(a) expenditure incurred on the Fund in pursuance of the purposes for which the Fund is established;

(b) balances that may accrue to the Fund;

(c) expenses arising out of administering the Fund; and

(d) such any other purpose(s) under the Act, as the Board may recommend, with the approval of the Cabinet Secretary.

Fund disbursements.

4. The funds shall be disbursed under the following conditions—

(a) all disbursements from the Fund as conditional and unconditional grants or loans to counties, water sector entities, marginalized areas and other areas considered by the Board of Trustees to be underserved; and for purposes of financing the development and management water and sanitation infrastructure, water services and resources, research and capacity development minuted and approved with the Board; with the concurrence of the Cabinet Secretary;

(b) transfers to defray the expenses in respect of the administration of the Fund shall be approved by the Board for the respective financial year;

(c) transfers towards investment of surplus funds shall be as approved by the Board from time to time; and

(d) the Fund shall set out other general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

Retention of Receipts.

5. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Administration of the Fund.

6. (1) The administrator of the Fund shall—

(a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Ministry and the National Treasury in accordance;

(b) supervise and control the administration of the Fund;

(c) consult with the Cabinet Secretary on matters relating to the administration of the Fund;

(d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;

(e) prepare, sign and transmit to the Auditor-General, upon the approval of the Board, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Accounting Standards Board shall prescribe;

(f) furnish additional information to the Auditor General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015; and

(g) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Public Finance Management Act, 2012, and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Cabinet Secretary for approval and subsequent transmission to the National Treasury and the Controller of Budget.

(2) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the quarter concerned.

(3) After the end of each month, the administrator of the Fund shall prepare a revenue statement and submit it to the Cabinet Secretary for publication in the Gazette.

Protection from personal liability.

7. No matter or thing done by any public officer working for the Administrator of the Fund, if done in good faith, for the purposes of executing the powers, functions or duties of the Fund under these Regulations, shall render that public officer personally liable for any action, claim or demand whatsoever.

Preparation and submission of work plans.

8. The administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and in preparing the work plan, projects and quarterly reports, the Administrator of the Fund shall ensure the work plan, projects and quarterly reports—

(a) contain information on the financial and non-financial performance of the Fund; and

(b) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

Approval of Reports.

9. The work plans, projects and quarterly reports referred to in Regulation 8 shall be prepared by the administrator of the Fund before submission to the Board for approval.

Financial reports.

10. (1) The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act, 2012 and as may be prescribed from time to time by the Accounting Standards Board.

(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under sub-regulation (1).

(3) The annual financial and non-financial statements under sub-regulation (1) shall be approved by the Board and submitted to the Auditor-General for audit within three months after the end of the financial year in accordance with the Public Audit Act, 2015 and a copy thereof submitted to the National Treasury.

Investment of Funds.

11. Where in the opinion of the Board it is appropriate to do so, the Board may direct such sums from the Fund as it determines, be invested in government securities.

Annuity and winding-up of the Fund.

12. In the event of winding up of the Fund, the provisions of the Public Finance Management Act, 2012 shall apply.

Made on the....., 2023.

HON. ALICE WAHOME

CABINET SECRETARY.