

REPORT OF THE AUDITOR-GENERAL ON COMMODITIES FUND FOR THE YEAR ENDED 30 JUNE 2017

REPORT ON THE FINANCIAL STATEMENTS

Disclaimer of Opinion

I have audited the accompanying financial statements of Commodities Fund set out on pages 27 to 58, which comprise the statement of financial position as at 30 June 2017, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015.

Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

In addition, as required by Article 229(6) of the Constitution, I have not been able to obtain sufficient appropriate audit evidence to confirm that public money has been applied lawfully and in effective manner.

Basis for Disclaimer of Opinion

1. Transfer of Assets and Liabilities from the defunct Sugar Development Fund

- (i) Commodities Fund was constituted by merging the Sugar Development Fund and the Coffee Development Fund after the enactment of Crops Act No. 13 of 2013. The initial investments of the Commodities Fund were expected to be inherited and derived from the two defunct funds. However, it has been observed that, while an amount of Kshs.1,178,153,000 was contributed by the defunct Coffee Development Fund, an amount of Kshs.4,052,300,000 that was to be contributed by the Sugar Development Fund was instead taken over by the Sugar Directorate under Agriculture and Food Authority (AFA).

Whereas the assets of the former Coffee Development Fund were automatically taken over by the newly formed Commodities Fund, the same did not happen with the assets and liabilities held by the former Sugar Development Fund. There exists no official handover report or any record to show how the assets and liabilities of the Sugar Development Fund were shared between Agriculture and Food Authority (AFA) and Commodities Fund. Consequently, the completeness and accuracy of

the total net assets and liabilities of Kshs.10,276,416,000 of the Fund as reflected in the statement of financial position as at 30 June 2017 cannot be confirmed.

2. Loans and Advances from Exchange Transactions

- (i) As previously reported, the statement of financial position as at 30 June 2017 reflects under non-current assets loans and advances totalling Kshs.7,246,862,000 and as disclosed under Note 14(iv) to the financial statements. This balance is net of Kshs.7,796,306,000 in respect of provision for non- performing loans advanced to various companies some of which are under receivership with an accrued interest of Kshs.2,534,150,000. Although full provision has been made on these long outstanding debts whose recovery remains doubtful, no evidence has been provided for verification showing the actions being taken to ensure recovery of the outstanding loans and accrued interest.
- (ii) The loans and advances balance of Kshs.7,246,862,000 includes amount of Kshs.1,915,615,011 advanced to five Sugar Companies in 2014/15 including one under receivership. Although management explained that the loans were processed and disbursed by Agriculture and Food Authority (AFA) Sugar Directorate, the management did not produce evidence of guarantors and loan security during the audit to confirm that the loans are secure. The loans and advances balance of Kshs.7,246,862,000 further includes Kshs.260,888,075 in respect of an outstanding loan due from West Kenya Sugar Company, which in turn includes Kshs.2,464,420 relating to legal fees in dispute.

From the foregoing, the loans and advances from exchange transactions balance of Kshs.7,246,862,000 as at 30 June 2017 can not be confirmed as fairly stated.

3. Receivables from Non-Exchange Transactions

- (i) The statement of financial position as at 30 June 2017 reflects under current assets a net receivable from non-exchange transactions balance of Kshs.46,280,000. Despite the Fund having made full provision for the long outstanding debts of Kshs.34,753,000, evidence of efforts made by the management of the Fund to recover these long outstanding debts has not been provided for audit review.
- (ii) Further, disclosed under Note 15 to the financial statements is an amount of Kshs.40,000,000 in respect of Other Debtors- Ministry. Records made available for audit indicates that the Ministry of Agriculture, Livestock and Fisheries requested the Fund`s management to remit this amount to support Chemilil Sugar Company and Coffee Sub Sector Implementation Committee. However, the terms of disbursement are not clear, and no supporting information has been provided for the same. Consequently, it has not been

possible to ascertain whether the amount was a loan to Chemilil Sugar Company and or the Coffee Sub-Sector Implementation Committee.

Under the circumstances, the recoverability of the receivables from non-exchange transactions balance of Kshs.46,280,000 as at 30 June 2017 cannot be confirmed.

4. Trade and Other Payables from Exchange Transactions (Creditors and Accruals)

The statement of financial positions as at 30 June 2017 reflects under current liabilities a balance of Kshs. 66,007,000 for trade and other payables from exchange transactions. As disclosed in Note 19 to the financial statements, the balance further includes Kshs.48,760,000 for third party payable, comprising of among others an amount of Kshs.43,000,000, which represents cash receipts from Sugar Companies for repayment of loans said to have been advanced by Agriculture and Food Authority (AFA). The Crops Act, 2013 does not give the Agriculture and Food Authority the power to advance loans and, without details of the loan balances, it is not clear how the Fund would account for the amount received from the Sugar Companies.

5. Undisclosed Material Uncertainty

The statement of financial performance reflects a deficit of Kshs.1,801,041, 000 for the year ended. The statement of financial position also reflects an accumulated deficit of Kshs.4,060,997,000 as at 30 June 2017(2016 – accumulated deficit of Kshs.2,330,631, 000). The operating deficit and the upward trend in accumulated deficit are indications of a material condition that may cast significant doubt on the Fund`s ability to sustain its services. However, this material uncertainty has not been disclosed by the management in the statement of trustees` responsibilities or in the notes to the financial statements.

6. The Fund`s Board of Trustees

- (i) The Crops Act No. 13 of 2013, which created the Fund, did not spell out clearly the mandate of the Fund`s Board of Trustees as well as its powers and responsibilities. Consequently, the Fund`s Board of Trustees ability to work independently and effectively in the absence of clear laws on its mandate, powers and responsibilities is doubtful.
- (ii) During the year under review, the Fund`s Board of Trustees operated without a substantive chairman contrary to Section 6(4) of the State Corporations Act, Cap 446 of the Laws of Kenya. This omission apparently impacted negatively on governance of the Fund.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Fund's ability to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless the management either intends to liquidate the Fund or to cease operations, or have no realistic alternative but to do so.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

Those charged with governance are responsible for overseeing the Fund's financial reporting process.

Auditor-General's Responsibilities for the Audit of the Financial Statements

My responsibility is to conduct an audit of the Fund's financial statements in accordance with International Standards of Supreme Audit Institutions (ISSAIs) and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. However, because of the matters described in the Basis for Disclaimer of Opinion section of my report, I was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

I am independent of the Commodities Fund in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with ISSAI and in accordance with other requirements applicable to performing audits of financial statements in Kenya.



FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

25 June 2018