THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2022

A Bill for

AN ACT of Parliament to amend the Public Finance Management Act and for connected purposes

ENACTED by Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2021.

Amendment of section 2 of No. 18 of 2012.

2. The Public Finance Management Act (hereinafter referred to as the "principal Act") is amended in section 2—

(a) in the definition of "County Public Debt," by deleting the word "public"; and

(b) by inserting the following new definitions in their proper alphabetical sequence—

"Financial obligations" in relation to public debt, includes outstanding amount of actual current liabilities that require payment(s) of principal, interest, fees, commissions and expenses by the government;

"Public debt" has the meaning assigned to it under Article 214 (2) of the Constitution.

Amendment of section 12 of No. 18 of 2012.

3. Section 12(2) of the principal Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) ensure proper management and control of, and accounting for the finances of the national government and its entities in order to promote the efficient and effective use of budgetary resources;

Amendment of section 15 of No. 18 of 2012.

4. Section 15 of the principal Act is amended—

(a) in subsection (2), by deleting paragraph (d) and substituting therefor the following new paragraph—

"(d) financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed are maintained at a sustainable level as advised by the Public Debt Management Office and approved by Parliament for the national government and by the county assembly for county government".

(b) in subsection (4), by deleting the words "national debt" and substituting therefor the words "public debt".

Amendment of section 31 of No. 18 of 2012.

5. Section 31 of the principal Act is amended in subsection (2) by deleting the words "national debt" and substituting therefor the words "public debt".

Amendment of section 50 of No. 18 of 2012.

6. Section 50 of the principal Act is amended—

(a) in subsection (2), by adding the following proviso at the end of the sentence—

"Provided that if, at any time, the public debt exceeds the limit set under this Act and the Regulations made thereunder, due to depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions, the Cabinet Secretary shall provide Parliament with a written explanation on the said circumstances leading to the breach of the limit and provide a time-bound remedial plan.

(b) by inserting the following new subsection immediately after subsection (2) —

"(2A) For the purposes of sub-section (2) fiscal disruptions includes, war, health pandemic or natural disasters."

(c) by deleting sub-section (6) and substituting therefor the following new sub-section—

"(6) A public debt and resultant financial obligations incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by Regulations approved by Parliament, that all or part of the public debt and resultant financial obligations is a charge on another public fund established by the national government or any of its entities".

Amendment of section 63 of No. 18 of 2012.

7. Section 63 of the principal Act is amended by adding the following new paragraph—

"(i) to advise Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing limit".

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Public Finance Management Act No. 18 of 2012 to operationalize the Public Debt and Borrowing with regard to framework for monitoring the level of public debt to align it with the provisions of Article 214(2) of the Constitution which defines “public debt” to mean all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

The structure of the Bill is as follows:

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill contains provisions to amend the Act by deleting the word “public” in the definition of the words “County Public Debt” and inserting the definition of the words “financial obligations” and “Public debt”.

Clause 3 of the Bill proposes to amend section 12 of the Act by deleting paragraph (b) and introducing a new provision that provides for the proper management and efficient use of budgetary resources by the national government and its entities.

Clause 4 of the Bill seeks to provide for financial obligations to be maintained at a substantial level as advised by Public Debt Management Office and Parliament. It also deletes the words “national debt” and substituting therefor the words “public debt” as the Constitution defines public debt and not national debt.

Clause 5 of the Bill contains provisions to amend section 31 of the Act by deleting the words “national debt” wherever it appears and replace it with the words “public debt” to align it with the definition in the Constitution.

Clause 6 of the Bill seeks to amend section 50 of the Act to require the Cabinet Secretary to give an explanation to Parliament, in writing, where the public debt exceeds the limit set out in law and the remedial plan.

Clause 7 of the Bill seeks to amend the Act by introducing a new paragraph in section 63 to add functions of the Public Debt Management Office to include advising Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing limit.

Dated the……………………………………………., 2022.

Ukur K. Yatani
Cabinet Secretary
for the National Treasury & Planning

Section 2 of No. 18 of 2012, which is proposed to amend—

"County Public Debt" means all financial obligations attendant to loans raised and securities issued by the county government;

Section 12(2)(b) of No. 18 of 2012, which is proposed to amend—

The National Treasury shall have the following functions, in addition to those in subsection (1)—

(b) ensure proper management and control of, and accounting for the finances of the national government and its entities in order to promote the efficient and effective use of budgetary resources at the national level;

Section 15(2)&(4) of No. 18 of 2012, which is proposed to amend—

(2) In managing the national government's public finances, the National Treasury shall enforce the following fiscal responsibility principles—

(d) public debt and obligations shall be maintained at a sustainable level as approved by Parliament for the national government and the county assembly for county government;

(4) The National Treasury shall ensure that the level of National Debt does not exceed the level specified annually in the medium term national government debt management strategy submitted to Parliament.

Section 31(2) of No. 18 of 2012, which is proposed to amend—

(2) Where either House of Parliament is canvassing a matter relating to the national debt, the Cabinet Secretary shall submit to Parliament, a report of all loans made to the national government, national government entities, and county governments, not later than seven days after receiving a request to do so from either House of Parliament.

Section 50(6) of No. 18 of 2012, which is proposed to amend—

(6) A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.