



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 4th May, 2023

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**THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2023**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2023.

Short title.

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

Amendment of section 2 of No. 18 of 2012.

(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 obligation” in relation to public debt, includes outstanding amount of actual current liabilities that require payment 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.

3. Section 12 of the principal Act is amended—

Amendment of section 12 of No. 18 of 2012.

(a) in subsection (1)(b), by deleting the word “national” wherever it appears; and

(b) in subsection (2), 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 government and its entities in order to promote the efficient and effective use of budgetary resources;”

4. Section 15 of the principal Act is amended—

Amendment of
section 15 of No.
18 of 2012.

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

“(d) public debt and 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”.

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 31 of No.
18 of 2012.

6. Section 50 of the principal Act is amended—

Amendment of
section 50 of No.
18 of 2012.

- (a) in subsection (2) —

- (i) by deleting the words “a limit” and substituting therefor the words “set threshold”;
- (ii) by inserting the following proviso at the end of the sentence—

“Provided that if, at any time, the Cabinet Secretary is unable to maintain the public debt threshold as required under this subsection or the Regulations made thereunder, the Cabinet Secretary shall submit a written report to Parliament explaining the cause of the breach on the threshold and provide a time-bound remedial plan.”

- (b) 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 obligation is a charge on another public fund established by the national government or any of its entities”.

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

Amendment of section 63 of No. 18 of 2012.

“(i) advising 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 proposes to amend section 2 of the Public Finance Management Act (“the Act”) by deleting the word “public” in the definition “County Public Debt”. Further, it proposes insertion of new definitions “public debt” and “financial obligations”.

Clause 3 of the Bill proposes to amend section 12(1) of the Act by deleting paragraph (b) and replacing it with a new paragraph that provides for the proper management and efficient use of budgetary resources by the national government and its entities. Further, it proposes to amend section 12(2) of the Act by deleting paragraph (b) and replacing it with a new paragraph 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 amend section 15 to provide for financial obligations to be maintained at a sustainable level as advised by Public Debt Management Office and Parliament. It also deletes the words “national debt” and substitutes 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 threshold 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.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 (1) (c) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule to the Constitution.

Statement on whether Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 27th April, 2023.

KIMANI ICHUNG'WAH,
Leader of Majority.

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

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“accounting officer” means—

- (a) an accounting officer of a national government entity referred to in section 67;
- (b) an accounting officer of a county government entity referred to in section 148;
- (c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or
- (d) in the case of the Parliamentary Service Commission —
 - (i) the Clerk of the Senate in respect of the Senate;
 - (ii) the Clerk of the National Assembly in respect of the National Assembly; and
 - (iii) such other officer in the parliamentary service in respect of any other office in the parliamentary service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution;

“Accounting Standards Board” means the Public Sector Accounting Standards Board established under section 192;

“appropriation” means—

- (a) authority granted by Parliament to pay money out of the Consolidated Fund or out of any other public fund; or
- (b) authority granted by a county assembly to pay money out of the relevant County Revenue Fund or out of any other county public fund;

“appropriation Act” means an Act of Parliament or of a county assembly that provides for the provision of money to pay for the supply of services;

“authorised officer” —

- (a) in relation to the National Treasury, means any of its members or officers authorised by the National Treasury in accordance with section 13; or

- (b) in relation to a County Treasury, means any of its officers authorised by the County Treasury in accordance with section 105;

“borrower” means a person to whom a loan has been or is to be made;

“Budget Policy Statement”, in relation to a financial year, means the Budget Policy Statement referred to in section 25;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“chart of account” means a structured list of accounts used to classify and record budget revenue and expenditure transactions as well as government assets and liabilities on a standard budget classifications system;

“Chief Officer” means the person appointed by the County Governor to administer the County department responsible for financial affairs;

“collector of revenue”—

- (a) in relation to the national government, means a person authorized under section 76 to be a collector of revenue for the national government;
- (b) in relation to a county government, means a person authorized under section 158 to be a collector of revenue for that county government;

“commitment” means entering into a contract or other binding arrangement under which expenses or liabilities may be incurred;

“Contingencies Fund” means the Contingencies Fund established by Article 208(1) of the Constitution;

“county corporation” means a public corporation within a county established by an Act of Parliament or county legislation;

“County Emergency Fund” means a Fund established under section 110;

“County Exchequer Account” means a County Exchequer Account referred to in section 109;

“County Executive Committee member for finance” means the member of a County Executive Committee responsible for the financial affairs of the County and for the County Treasury;

“County Fiscal Strategy Paper”, in relation to a county government, means the County Fiscal Strategy Paper referred to in section 117;

“county government entity” means any department or agency of a county government, and any authority, body or other entity declared to be a county government entity under section 5(1);

“county government revenue” means all money derived by or on behalf of a county government from levies, rates, fees, charges or any other source authorised by the Constitution or an Act of Parliament;

“county government security” means a security issued by the county government under section 144 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the county government;

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

“County Treasury” means a County Treasury established under section 103;

“development expenditure” means the expenditure for the creation or renewal of assets;

“development partner” means a foreign government, an international organisation of states or any other organisation prescribed by regulations for the purpose of this Act;

“external government security” means a national government security which is issued outside Kenya;

“external loan” means any loan governed by the laws of a jurisdiction other than Kenya;

“financial objectives” means the financial objectives set out in a Budget Policy Statement of the national government or in the County Fiscal Strategy Paper of the county governments;

“financial statements”, in relation to a financial year or other accounting period of the national government, county government, or a national government or county government entity, means—

- (a) the financial statements referred to in Part III and Part IV of this Act; and
- (b) the financial statements prescribed by the Accounting Standards Board;

“fiscal responsibility principles” means the principles of public finance specified in Article 201 of the Constitution, together with—

- (a) the principles of fiscal responsibility referred to in section 15, in relation to national government; and
- (b) the principles of fiscal responsibility referred to in section 107, in relation to a county government;

“Government to government loan” means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial institution that acts as an intermediary between the Government and exporters to facilitate export financing, whether by means of buyer or supplier credit, credit insurance, financial intermediary loans, guarantees, Organization for Economic Cooperation and Development (OECD) tied-aid credit or officially supported export credit depending on the mandate granted to such export credit agency by the relevant government for the purpose of facilitating trade and investment between the two countries;

“Intergovernmental Budget and Economic Council” means the Council established under section 187;

“internal auditing” means an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations, which helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes;

“Islamic finance return” has the same meaning assigned to it under section 2 of the Income Tax Act;

“loan” means any borrowing with or without interest from any source or any issuance of a national government security;

“medium enterprise” means a firm, trade, service, industry or business activity —

- (a) whose annual turnover is between five million shillings and one hundred million shillings;
- (b) which employs between fifty one and two hundred and fifty employees;
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed two hundred and fifty million shillings; and

(ii) the service sector and farming enterprises, where the investment in equipment or registered capital of the enterprise does not exceed one hundred and twenty-five million shillings;

“medium term” means a period of not less than three years but not more than five years;

“micro enterprise” has the meaning assigned to it in section 2 of the Micro and Small Enterprises Act (No. 55 of 2012);

“National Exchequer Account” means the National Exchequer Account referred to in section 17;

“national government entity” includes any department or agency of the national government and any authority, body or other entity declared to be a national government entity under section 4(1);

“national government revenue” means all taxes imposed by the national government under Articles 206(1)(a) and (b) and 209 of the Constitution, excluding county government revenue;

“national government security” means a security issued by the national government under section 53 or section 53A and a treasury bill, treasury bond, Sukuk, treasury note, government stock and any other debt instrument issued by the national government;

“National Treasury” means the National Treasury established by section 11;

“Principal Secretary”, in relation to the National Treasury, means the person responsible for the administration of the National Treasury;

“public money” includes—

- (a) all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) money held by national government entities in trust for third parties and any money that can generate liability for the Government;

“publicise”, in relation to a document, means to make known to the public, through the national or local media—

- (a) the general nature of the document; and
- (b) how and where it may be accessed and read by members of the public;

“publish”, in relation to a document, includes—

- (a) publishing the document in a newspaper, Government Gazette or other publication of general circulation in Kenya; or
- (b) publication of an abridged or summary versions of the documents without losing the core content of the document; or
- (c) making the document available for reference at public libraries or offices of national government entities or in archives of those institutions; or
- (d) posting the document on the internet on a Government website; or
- (e) if the document relates only to a county government or any of its entities—
 - (i) publishing the document in a newspaper or other publication of general circulation in the County;
 - (ii) making the document available for reference at public libraries or offices of the county government or those entities; or
 - (iii) posting the document on the Internet on a county government website;

“receiver of revenue”—

- (a) in relation to the National government, means a person designated to be a receiver of revenue under section 75;
- (b) in relation to the county government, means a person designated to be a receiver of revenue under section 157;

“recurrent expenditure”—

- (a) in relation to the national government, means the expenditure that is incurred in operating the services provided by the national government; and
- (b) in relation to a county government, means the expenditure that is incurred in operating the services provided by that county government, but does not include expenditure incurred in creating or renewing assets belonging to or managed by that government;

“regulations” means regulations made under this Act;

“short term borrowing” means borrowing by a government by way of Treasury Bills, bank-overdraft or other instrument to cover temporary cash shortfalls and is repayable within twelve months;

“small enterprise” has the meaning assigned to in section 2 of the Micro and Small Enterprises Act (No. 55 of 2012);

“Sukuk” means certificates of equal value, representing undivided shares in ownership of tangible or intangible assets, usufruct of assets; services or an investment activity, structured in conformity with Islamic law;

“Treasury Single Account”—

- (a) in relation to the national government, means a centralised bank account system where all deposits and payment transactions are processed for State Departments, Commissions and Independent Offices, and any national government entity which draws directly from the Consolidated Fund;
- (b) in relation to the county government, means a centralised bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund;

“Urban Board” means a city or municipal board within the meaning of the Urban Areas and Cities Act (No. 13 of 2011);

“vote” means money authorised by an appropriation Act for withdrawal from the Consolidated Fund or a County Revenue Fund; and

“wasteful expenditure” means any expenditure that was incurred which could have been avoided had due care and diligence been exercised.

(2) Terms used in this Act which are also used in the Constitution have the same meaning as they have in the Constitution.

(3) For the purposes of this Act, the reference to the term 'interest' in relation to a national government security shall also apply to reference to Islamic finance return on Sukuk.

Section 12 of No. 18 of 2012 which it is proposed to amend—

12. General responsibilities of the National Treasury

(1) Subject to the Constitution and this Act, the National Treasury shall—

- (a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;
- (b) manage the level and composition of national public debt, national guarantees and other financial obligations of national

government within the framework of this Act and develop a framework for sustainable debt control;

- (c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;
- (d) mobilise domestic and external resources for financing national and county government budgetary requirements;
- (e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution:

Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;

- (f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;
- (g) develop policy for the establishment, management, operation and winding up of public funds;
- (h) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the legislative proposals on annual Division of Revenue and County Allocation of Revenue;
- (i) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
- (j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

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

- (a) promote transparency, effective management and accountability with regard to public finances in the national government;

- (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;
- (c) co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities;
- (d) prepare annual estimates of revenue of the national government, and co-ordinate the preparation of the budget of the national government;
- (e) consolidate reports of annual appropriation accounts and other financial statements of the national government and county governments and their entities;
- (f) report every four months to the National Assembly on the implementation of the annual national budget on areas not reported on by the Controller of Budget;
- (g) be the custodian of an inventory of national government assets except as may be provided by other legislation or the Constitution;
- (h) monitor the management of the finances of public enterprises and investments by the national government and its entities;
- (i) monitor the financial aspects of risk management strategies and governance structures for the national government and national government entities;
- (j) monitor the financial performance of state corporations; and
- (k) issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.

(3) The National Treasury shall take such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

Section 15 of No. 18 of 2012 which it is proposed to amend—

15. The National Treasury to enforce fiscal responsibility principles

(1) The National Treasury shall manage the national government's public finances in accordance with the Constitution, and the principles of fiscal responsibility set out in subsection (2).

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

- (a) over the medium term a minimum of thirty percent of the national and county governments budget shall be allocated to the development expenditure.
- (b) the national government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the national government revenue as prescribed by regulations;
- (c) over the medium term, the national government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;
- (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;
- (e) fiscal risks shall be managed prudently; and
- (f) a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.

(3) For the purposes of subsection (2)(c), short term borrowing shall be restricted to management of cash flows and in case of a bank overdraft facility it shall not exceed five per cent of the most recent audited national government revenue.

(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.

(5) Regulations made under this Act may add to the list of fiscal principles set out in subsection (2).

Section 31 of No. 18 of 2012 which it is proposed to amend—

31. Cabinet Secretary to report on all loans

(1) The Cabinet Secretary shall submit to Parliament, every four months, a report of all loans made to the national government, national government entities and county governments, in accordance with Article 211(2) of the Constitution.

(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.

(3) At the end of every four months, the Cabinet Secretary shall submit a report to Parliament stating the loan balances brought forward, carried down, drawings and amortizations on new loans obtained from outside Kenya or denominated in foreign currency, and such other information as may be prescribed by regulations, specifying—

- (a) the names of the parties to the loan;
- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time the report is submitted;
- (e) the purpose for which the loan was used and the perceived benefits of the loan; and such other information as the Cabinet Secretary may consider appropriate.

Section 50 of No. 18 of 2012 which it is proposed to amend—

50. Obligations and restrictions on national government guaranteeing and borrowing

(1) In guaranteeing and borrowing money, the national government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market which is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament.

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(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.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;
- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

- (a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and
- (b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

- (a) on the Consolidated Fund; or
- (b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.

Section 63 of No. 18 of 2012 which it is proposed to amend—

63. Functions of the Public Debt Management Office

The functions of the Public Debt Management Office shall include—

- (a) carrying out the government's debt management policy of minimizing its financing cost over the long-term taking account of risk;
- (b) maintaining a reliable debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government;
- (c) prepare and update the annual medium-term debt management strategy including debt sustainability analysis;
- (d) prepare and implement the national government borrowing plan including servicing of outstanding debts;
- (e) acting as the principal in the issuance of Government debt securities on behalf of the National Treasury;
- (f) monitor and evaluate all borrowing and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy;
- (g) process the issuance of loan guarantees including assessment and management of risks in national government guarantees.
- (h) transact in derivative financial instruments in accordance with best international practices benchmarked to the debt management offices of other governments that are internationally respected for their practices.