Approved SNA 26/11/24

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

.....

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, (No. 4) (NATIONAL ASSEMBLY BILL NO. 45), 2024

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2024

TABLE OF CONTENTS

LIST OF ABBREVIATION

KEPSA	Kenya Private Sector Alliance
KISM	Kenya Institute of Supplies Management
KURA	Kenya Urban Roads Authority
MP	Member of Parliament
ODM	Orange Democratic Movement
PPRA	Public Procurement Regulatory Authority
UDA	United Democratic Alliance

ANNEXURES

Annexure 1: Adoption Schedule
Annexure 2: Minutes
Annexure 3: The Public Finance Management Bill No.3 (National Assembly Bills No. 45 of 2024)
Annexure 5: Advertisement inviting the public to submit memoranda on the Bill
Annexure 6: Letter from the Clerk of the National Assembly inviting relevant stakeholders to submit memoranda on the Bill
Annexure 7: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum
Annexure 8: Copies of Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning proceedings regarding its review of the Public Finance Management (Amendment) Bill (No. 4), 2024 (National Assembly Bill No. 45) 2024, published on 23rd October 2024 and read a First Time on 13th November 2024. The Bill was subsequently referred to the Departmental Committee on Finance and National Planning for consideration and reporting to the House pursuant to Standing Order 127.

The Bill seeks to amend Section 50 of the Public Finance Management Act, 2024 to defer the enforcement of 55% (+/- 5%) borrowing limits debt anchor. These thresholds will be enacted only five years after the Act comes into force.

It is worth noting that the Bill suspends the implementation of Sections 2A and 2B from the date this Act comes into force. However, under Section 2CA, the Bill proposes that the Cabinet, within five years of the coming to force of the Act, must take measures to ensure that borrowing by the national government complies with the threshold established in subsection 2A.

The Bill further proposes an amendment to Section 194 to introduce two additional responsibilities for the Accounting Standards Board:

I. **Implementation of Accrual Accounting:** The Board will be tasked with establishing a framework for implementing accrual accounting, a system that records financial transactions at the time they occur, rather than when cash is exchanged.
II. **Development of a Risk Management Framework:** The Board will also be required to develop a risk management framework to assist government entities in identifying, assessing, and effectively managing financial risks.

In addition, the amendment proposes a three-year transition period for adopting the accrual accounting framework. This phased implementation will allow government entities sufficient time to adapt their systems and processes to the new accounting standards.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024 inviting the public to submit memoranda by way of both oral and written submissions on the Bill.

The Committee on diverse dates between Monday 18th and Wednesday 20th November 2024, conducted public participation forums in six(6) counties, namely Isiolo, Bungoma, Siaya, Mombasa, Kericho, and Taita Taveta Counties, where the Committee received views from the members of the public.

Additionally, the Committee, in line with the requirements of Article 118 of the Constitution, vide letters REF: NA/DDC/F&NP/2024/(126) dated 15th November,2024, invited

stakeholders for stakeholder engagement sessions which were held on 22nd November, 2024 and to 23rd November, 2024 at Mini Chamber in Parliament Buildings. The Committee also held a consultation meeting with the National Treasury.

The Committee, having reviewed the Public Finance Management (Amendment) Bill, 2024 (No.4) *(National Assembly Bill No.45 of 2024)*, recommends that the House approves the Bill with amendments.

It is my pleasure to report that the Committee has considered the Public Finance Management Bill (No.4) (National Assembly Bills No. 45 of 2024) and wishes to report to this August House with the recommendation that the House approves the Bill with amendments.

HON. CPA KIMANI KURIA, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Offices of the Speaker and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance greatly facilitated the Committee's deliberations and ensured the smooth progress of its work. The Committee also acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have significantly enriched the Committee's understanding of the various perspectives on the proposed measures.

In addition, the Committee expresses its heartfelt appreciation to the Honorable Members of the Committee and the dedicated Committee Secretariat. Their commitment, expertise, and collaborative efforts were instrumental in preparing and producing this comprehensive report. Their diligent work enabled the Committee to fulfill its mandate effectively and present a thorough analysis of the Public Finance Management (Amendment) Bill, 2024.

On behalf of the Departmental Committee on Finance and National Planning, and per Standing Order 199(6), it is both a privilege and an honor to present to this esteemed House the Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Finance Management (Amendment) Bill, No. 4, 2024. This report represents the culmination of rigorous deliberations, careful consideration of diverse viewpoints, and a steadfast commitment to advancing sound fiscal policies to foster economic growth, support public welfare, and ensure the nation's financial sustainability. The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

PART ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandate under is as follows:
    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
    iii. ***To study and review all the legislation referred to it;***
    iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
    v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
    vii. *To examine treaties, agreements and conventions;*
    viii. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
    ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution and*
    x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and departments:
    i. National Treasury and Planning
    ii. Commission on Revenue Allocation
    iii. Office of the Controller of Budget
    iv. State Department for Economic Planning

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson
Hon. CPA Kuria Kimani, MP
Molo Constituency
UDA Party

Vice-Chairperson
Hon. Amb. Benjamin Langat, CBS, MP
Ainamoi Constituency
UDA Party

Hon. Dr. Adan Keynan, CBS, MP
Eldas Constituency
Jubilee Party

Hon. David Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Joseph Kipkoros Makilap, MP
Baringo North Constituency
UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency
ODM Party

Hon. George Sunkuya, MP
Kajiado West Constituency
UDA Party

Hon Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDM Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency
Jubilee Party

Hon. Joseph Munyoro, MP
Kigumo Constituency
UDA Party

Hon. Soud Machele, MP
Mvita Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitates the Committee

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director, Legal Service

Mr. Salem Lorot
Legal Counsel I

Mr. James M. Macharia
Media Relations Officer I

Ms. Peninnah Simiren
Legal Counsel II

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. Benson Kamande
Clerk Assistant III

Ms. Nelly W.N Ondieki
Research Officer III

Mr. Benson Muthuri
Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Officer III

6. Further, the Committee Secretariat was supported by the following technical officers

i. Dr. Martin M. Masinde - **Director, Parliamentary Budget Office**
ii. Dr. Robert Nyaga - **Deputy Director, Parliamentary Budget Office**
iii. Mr. Cyrill Mutali - **Fiscal Analyst, Parliamentary Budget Office**

PART TWO

2.0 OVERVIEWS OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2024

II.1 INTRODUCTION

7. The principal object of the Public Finance Management (No 4) (Amendment) Bill 2024 is to amend the Public Finance Management Act (Cap. 412A) section 50, to provide for the obligations and restrictions on national government guaranteeing and borrowing. Under the existing law, the national government is allowed to borrow up to a limit of 55% of GDP in present value terms (subsection 2A). In exceptional circumstances, the government can exceed this threshold by up to 5%, raising the borrowing limit to 60% of GDP (subsection 2B). These provisions are intended to ensure that public debt remains sustainable while allowing some flexibility in times of need.

II.2 REVIEW OF THE BILL

8. The Bill seeks to postpone the implementation of the 55% (+/- 5%) borrowing limits. These thresholds is proposed to only take effect five years after the coming into force of Act. This delay intends to give the government more time to adjust its borrowing strategies without immediately breaching the limits, allowing for better management of fiscal challenges in the short term.

9. It is worth noting that the Bill suspends the implementation of Sections 2A and 2B from the date this Act comes into force. However, under Section 2CA, the Bill mandates that the Cabinet, within five years of the Act's commencement, must take measures to ensure that borrowing by the national government complies with the threshold established in subsection 2A.

10. Further, the Bill amends Section 194 to introduce two additional responsibilities for the Accounting Standards Board.
    I. The Board is now required to establish a framework for the implementation of accrual accounting, a system that records financial transactions when they occur, rather than when cash is exchanged. This shift aims to improve the accuracy and transparency of financial reporting.
    II. The Board must develop a risk management framework to help government entities identify, assess, and manage financial risks effectively. These new functions enhance the Board's role in advancing robust financial and accounting practices across the public sector.

11. Additionally, the amendment provides for a three-year transition period for the implementation of the accrual accounting framework. This allows government entities sufficient time to adapt their systems and processes to meet the new accounting standards. The phased approach ensures a smoother shift to accrual accounting, minimizing disruption while promoting long-term improvements in financial management and reporting.

PART THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION.

12. Article 118 (1)(b) of the Constitution provides that:
    "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

13. The National Assembly Standing Order 127 (3) and (3A) stipulates that:
    "(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

    (a) inviting submission of memoranda;

    (b) holding public hearings;

    (c) consulting relevant stakeholders in a sector; and

    (d) consulting experts on technical subjects.

    (3A) The Departmental Committee shall consider the views and recommendations of the public under paragraph (3) in its report to the House.

3.2 STAKEHOLDER AND PUBLIC ENGAGEMENTS

14. Pursuant to the aforementioned law provisions, the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024, inviting the public to submit memoranda through written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024(126), dated 15th November 2024, invited stakeholders to submit views on the Bill and attend a public participation forum on 22nd November and 23rd November 2024, respectively.

15. The Committee received memoranda from the four (2) entities, namely Westminster Consulting and Okoa Uchumi. Further, the Committee received views from Isiolo County, Mombasa County, Kericho County, and Siaya County residents. The memoranda are annexed to this report as Annexure 8.

16. The feedback received from the interactions with stakeholders and from various members of the public from Counties provided valuable input, highlighting specific concerns and suggestions for amendments. The following are the submissions on various clauses of the Bill:

ISIOLO COUNTY – BISHOP MENZA HALL

17. On 18th November 2024, the Committee held public hearings in Isiolo County, specifically Isiolo North Sub-County, to engage with members of the public. During the

session, residents expressed their opposition to the Bill's proposal to delay the implementation of the 55% and 5% borrowing limits, which are scheduled to take effect five years after the Act's commencement.

18. The public voiced concerns that postponing these borrowing thresholds would enable the government to accumulate significant debt without adequate public oversight or accountability. They cautioned that this delay could result in repeated, unchecked borrowing, with insufficient consideration of the long-term economic and social impacts.

Committee Observation

19. **The Committee noting the resident's views, noted that the proposed amendment does not seek to change the effective date but rather to remove the ambiguity in interpretation of the provisions.**

TAITA TAVETA COUNTY- MWATATE CDF HALL

20. The residents of Mwatate were against the proposal by expressing dissatisfaction and lack of trust in the government. They cited the government's poor performance, highlighting the inability to deliver services, despite paying taxes to raise revenue and through borrowing. They also stated that the burden of taxation should be accompanied by visible results of development, service delivery, transparency, and accountability.

21. Further, members of the public in Taita Taveta pointed out that taxpayers are servicing loans that were borrowed by the government and did not benefit Kenyans. They urged the government to adhere to Chapter 6 of the Constitution of Kenya, 2010 on 'Leadership and Integrity', which outlines the ethical code of conduct for state officers and public entities.

Committee Observation

22. **The Committee noting the resident's views, noted that the proposed amendment does not seek to change the effective date but rather to remove the ambiguity in interpretation of the provisions.**

KERICHO COUNTY – ACK HALL

23. The residents of Kericho County supported the bill, highlighting that enforcing public debt thresholds would promote sustainable borrowing and prudent fiscal planning. They also noted that implementing accrual accounting and risk management frameworks would enhance transparency and financial oversight. Additionally, they emphasized the importance of financing projects and budgets locally to reduce reliance on external borrowing.

WESTMINSTER

Clause 2 (a&b)

24. The proposal to extend the commencement time of having a threshold for borrowing will give the government additional fiscal flexibility, easing the pressure on its tight budgetary constraints. Limiting the national government's borrowing to 55% of GDP will grant the government an opportunity for fiscal restructuring to stabilize debt levels, implement economic reforms, and align with sustainable borrowing practices.

Clause 3(a)(h)

25. Westminster supported the proposal to introduce a framework for implementing accrual accounting across government institutions. The framework will enhance accountability by enabling the government to account for expenditures and revenues more accurately, especially addressing the issue of pending bills in counties. Additionally, implementation of the proposal will improve supplier payments by ensuring suppliers who worked in a previous financial year can be paid in subsequent years, reducing delays and financial strain. There will also be a reduction of Year-End spending pressure, which will eliminate the practice of exhausting budgets by the fiscal year's end, fostering better financial management. Lastly, the proposal will ensure transparency in revenue matching by facilitating proper revenue recognition by matching expenses and revenues to the correct financial period, thereby improving financial reporting.

Clause 3(a) (i)

26. The proposal to introduce a risk management framework will enhance financial oversight, by providing a continuous mechanism to address risks like insolvency and revenue shortfalls, particularly in county governments. Further, the proposed amendment will address the wage concerns by ensuring more accountability in payroll management, reducing instances of "ghost workers" and unsustainable salary expenditures (currently exceeding 30% of revenue in some counties). Financial planning will also be strengthened to support government institutions in proactively managing risks and ensuring long-term fiscal sustainability.

Clause 3 (b)

27. Westminster supported a three-year transition period for implementing the accrual accounting framework but emphasized the need for immediate implementation to ensure pending bills and revenue are fully accounted for in the next financial year. They highlighted challenges posed by dual accounting, where the coexistence of cash and accrual systems during the transition creates ambiguity about how transactions should be classified. Meanwhile, Westminster Consulting argued that the bill lacks clear guidelines on handling specific transactions under both systems, potentially leading to inconsistencies in financial reporting.

OKOA UCHUMI

Clause 2(a)

28. Delete the Clause that is meant to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary and National Treasury for compliance, thus moving compliance requirements to the 14th Parliament. Debt sustainability and prudence were at the core of the current regime's manifesto and campaigns. Capped with unattainable living costs, the country cannot afford the luxury of allowing further borrowing sprees with the hope of postponing the debt problem. If unchecked and assumed, this amendment will escalate inequality in carrying the debt burden between current and future generations.

Committee Observations.

29. **The Committee noted that the proposed amendment does not seek to change the effective date but rather to remove the ambiguity.**

Clause 2(b)

30. Delete Clause 2(b) that introduces a new subsection extending the debt threshold five years after the Act's commencement, allowing the government to borrow without being constrained by the current debt limit of 55% of GDP. This will create room for increased borrowing in the short term which would lead to a significant increase in Kenya's overall debt.

Committee Observations

31. **The Committee agreed with the stakeholder's proposal and proposed the deletion of the words 'not later than five(5) years from the date of the coming into force of this Act' to cure the ambiguity.**

Clause 3

32. The Okoa Uchumi is in support of the Clause. This is meant to ensure that the government has a clear picture of its financial obligations, improves its financial management, and enhances the public sector financial reporting as accrual accounting records financial transactions when they are incurred, hence improving transparency and governance. It will also help to deal with the problem of pending bills and other contingent liabilities.

PART FOUR

4.0 COMMITTEE OBSERVATIONS

33. The Committee, having reviewed the Public Finance Management (Amendment) (No4) Bill, 2024 *(National Assembly Bill No. 45 of 2024)*, observed THAT:

    I. The Cabinet Secretary, the National Treasury, should take progressive measures to ensure government borrowing complies with the prescribed threshold.

    II. The Public Sector Accounting Standard Board should fast-track the establishment of a framework for implementing accrual accounting, where financial transactions are recorded when they occur rather than when cash is received, with the aim of improving accuracy and transparency in financial reporting.

PART FIVE

5.0 COMMITTEE RECOMMENDATION

34. The Committee, having reviewed the Public Finance Management (Amendment) Bill, 2024 (No 4) (National Assembly Bill No. 45 of 2024), recommends that the House approves the Bill with amendments.

SIGNED..... **DATE**.....25th November, 2024.....

HON. CPA KURIA KIMANI, MP

CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 26 NOV 2024		DAY. TEU
TABLED BY:	DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING	
CLERK-AT THE-TABLE:	MERCY CHUMO	

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST
REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL, (NATIONAL ASSEMBLY BILL.NO.45 OF 2024).

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Monday 25th November, 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - **CHAIRPERSON**	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – **VICE CHAIRPERSON**	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETTING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

MINUTES OF THE 95TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON MONDAY, 25TH NOVEMBER 2024, IN THE KENYA INTERNATIONAL CONVENTION CENTRE (KICC) AMPHITHEATRE, NAIROBI, AT 5.00 PM.

PRESENT

1. Hon CPA Kuria Kimani, MP - Chairperson
2. Hon. (Amb.) Benjamin Kipkirui Langat, MP - Vice- Chairperson
3. Hon (Dr.) Adan Keynan Wehliye, MP
4. Hon. Joseph Makilap Kipkoros, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon Joseph Kamau Munyoro, MP
7. Hon. CPA Julius Kipletting Ruto, MP
8. Hon. George Sunkuiya Risa, MP
9. Hon. Dr. John Ariko Namoit, MP
10. Hon. Paul Kibichiy Biego, MP
11. Hon. Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon. David Mwalika Mboni, MP
2. Hon. Dr. Shadrack Mwiti Ithinji, MP
3. Hon. Andrew Adipo Okuome, MP
4. Hon. Mohamed Soud Machele, MP

IN ATTENDANCE

SECRETARIAT

1.	Ms. Jennifer Ndeto	-	Deputy Director, Legal Services
2.	Mr. Benjamin Magut	-	Principal Clerk Assistant II
3.	Ms. Brigitta Mati	-	Legal Counsel I
4.	Mr. Salem Lorot	-	Legal Counsel I
5.	Ms. Winfred Kambua	-	Clerk Assistant III
6.	Mr. Bemson Kamande	-	Clerk Assistant III
7.	Mr. Mabut Mutua	-	Legal Counsel II
8.	Mr. James Macharia	-	Media Relations Officer
9.	Mr. George Ndenjeshe	-	Fiscal Analyst III
10.	Ms. Nelly Ondieki	-	Researcher Officer III
11.	Ms. Gladwel Amimo	-	Fiscal Analyst II
12.	Mr. Onyango Adera	-	Fiscal Analyst III
13.	CPA Cyrille Mutali	-	Fiscal Analyst
14	Mr. Lenny Muchangi	-	Legal Counsel II
15.	Ms. Joyce Wachera	-	Hansard Reporter II
16.	Mr. Benson Muthuri	-	Serjeant At Arms
17.	Mr Allan Kimani	-	Intern
18.	Mr. Ian Kinuthia	-	Intern

AGENDA

Consideration and adoption of the following reports.

1. Consideration and Adoption of the report on The Public Procurement and Asset Disposal (Amendment) Bill, (National Assembly Bill No 48 of 2024)
2. Consideration and Adoption of the report on The Public Finance Management (Amendment) Bill 2024. (Amendment No. 3.) Bill (National Assembly Bill No. 44 Of 2024)
3. Consideration and Adoption of Report on The Public Finance Management (Amendment) Bill 2024. (Amendment No. 4) Bill (National Assembly Bill No.45 of 2024)

MIN No. NA/F & NP/2024/340: PRELIMINARIES

The meeting was called to order at 5.15 pm followed by prayer by Hon. Joseph Kamau Munyoro, MP

MIN No. NA/F & NP/2024/341: CONFIRMATION OF PREVIOUS MINUTES

Confirmations of the minutes of the previous sittings were differed to the next sitting.

MIN No. NA/F & NP/2024/342: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 48 OF 2024)

The Committee adopted the report, which was proposed by Hon. Joseph Kamau Munyoro, MP, and seconded by Hon. CPA. Joseph Maero Oyula, MP.

Committee Recommendations

The Committee, having reviewed The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No 48 of 2024), recommended that the House approve the report.

MIN No. NA/F & NP/2024/343: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL 2024. (AMENDMENT NO. 3.) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2024)

The Committee adopted the report having been proposed by Hon. George Sunkuiya Risa, MP and seconded by Hon. Paul Kibichiy Biego, MP.

Committee Recommendations

The Committee having reviewed The Public Finance Management (amendment) Bill 2024. (amendment No. 3.) Bill (National Assembly Bill No. 44 of 2024) recommended that the House approves the report.

MIN No. NA/F & NP/2024/345: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT

(AMENDMENT) BILL 2024. (AMENDMENT NO. 4) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2024)

The Committee adopted the report having been proposed by Hon. Joseph Makilap Kipkoros, MP and seconded by Hon. CPA Julius Kipletting Ruto, MP

Committee Recommendations

The Committee having reviewed The Public Finance Management (amendment) Bill 2024. (Amendment No. 4) Bill (National Assembly Bill No. 45 of 2024) recommended that the House approves the report.

MIN No. NA/F & NP/2024/346: ADJOURNMENT

There being no other business, the meeting was adjourned at 6:25 PM. The next meeting will be held on notice.

SIGNED: .....**DATE**.....25th November, 2024.....

HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLES 118(1)(b) ,250(2) OF THE CONSTITUTION
AND
IN THE MATTER OF SECTION 11(5) OF THE INDEPENDENT POLICING OVERSIGHT ACT (CAP. 86)
AND
IN THE MATTER OF THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) ACT (CAP. 7F)
AND
IN THE MATTER OF APPROVAL BY THE NATIONAL ASSEMBLY OF PERSONS NOMINATED FOR APPOINTMENT AS CHAIRPERSONS AND MEMBERS OF THE COMMISSION ON ADMINISTRATIVE JUSTICE, SALARIES AND REMUNERATION COMMISSION, NATIONAL GENDER AND EQUALITY COMMISSION AND THE BOARD OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

NOTIFICATION OF APPROVAL HEARINGS AND INVITATION TO SUBMIT MEMORANDA

WHEREAS, in accordance with **Article 250(2)** of the Constitution and section 11(5) of the Independent Policing Oversight Authority Act (Cap. 86); H.E. the President is empowered to nominate and, **with the approval of the National Assembly**, appoint the Chairpersons and Members of the Commission on Administrative Justice (CAJ), Salaries and Remuneration Commission (SRC), and the National Gender and Equality Commission (NGEC); and the Board of the Independent Policing Oversight Authority (IPOA);

AND WHEREAS, following receipt of the nominations from H.E. the President, the Hon. Speaker of the National Assembly vide a Communication made on **Wednesday, 13th November 2024** conveyed the Messages to the House and referred the names and curriculum vitae of the nominees to the **Departmental Committees on Justice and Legal Affairs, Labour, Social Protection** and **Administration and Internal Security** for consideration and reporting to the House:

IT IS NOTIFIED to the general public that pursuant to **Article 118(1)(b) of the Constitution** and **section 6(4) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F)**, the **Departmental Committees** shall conduct Approval Hearings (Vetting) of the nominees on **Friday, 22nd November, 2024 at Parliament Buildings** as per the schedule below—

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
ENTITY: COMMISSION ON ADMINISTRATIVE JUSTICE

S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Charles Orinda Oulo	Chairperson	8:30am	Committee Room 19, 3rd Floor Bunge Tower, Parliament Buildings
2.	Hon. Charles Njagua Kanyi	Member	9:45am	
3.	Ms. Dorothy Jemator Kimengech	Member	11:00am	

DEPARTMENTAL COMMITTEE ON LABOUR
ENTITY: SALARIES AND REMUNERATION COMMISSION

S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Sammy Chepkwony	Chairperson	8:30am	Committee Room 9, 1st Floor, Main Parliament Buildings
2.	Maj. Gen. (Rtd) Martin Kizito Ong'oyi, CBS	Member	9:45am	
3.	Mr. Mohamed Aden Abdi	Member	11:00am	
4	Ms. Jane Gatakaa Njage	Member	12:00pm	
5.	Mr. Leonid Ashindu	Member	2:00pm	
6.	Dr. Gilda Odera	Member	3:00pm	
7.	Dr. Geoffrey Apollo Omondi	Member	4:15pm	

DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION
ENTITY: NATIONAL GENDER AND EQUALITY COMMISSION

S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Hon. Rehema Dida Jaldesa	Chairperson	8:30am	Committee Room 7, 1st Floor, Main Parliament Buildings
2	Mr. Michael Mbithuka Nzomo (PWD)	Member	9:45am	

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY
ENTITY: BOARD OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Ahmed Issack Hassan, CBS	Chairperson	8:30 am	Mini Chamber, 1st Floor, County Hall, Parliament Buildings
2.	Ms. Ann Wanjiku Mwangi	Member	9:30am	
3.	Dr. Micah Onyiego Nyakego	Member	10:30am	
4.	Mr. Boniface Kipkemoi Samati	Member	11:30pm	
5.	Dr. Annette Mbogoh	Member	12.30pm	
6.	Hon. John Muchiri Nyaga	Member	2:00pm	
7.	Mr. Kenwilliams Nyakomitah	Member	3:00pm	
8.	Ms. Jackline Lukalo Mwenesi	Member	4:00pm	

AND WHEREAS, section 8(9) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F) provides that ***"any person may prior to the approval hearing and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated";***

IN COMPLIANCE with Article 118(1)(b) of the Constitution and section 8(9) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F), the Clerk of the National Assembly hereby invites members of the public to submit any representations they may have, by way of **written statements on oath (affidavits) with supporting evidence contesting the suitability of the candidates** for appointment to the offices they have been nominated to

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to cna@parliament.go.ke to be received **on or before Thursday, 21st November 2024 by 5.00 p.m.**

IT IS FURTHER NOTIFIED THAT the nominees are required to—

(1) Appear for the approval hearings with the original identity cards, academic and professional certificates and other relevant testimonials; and
(2) Obtain letters/certificates of compliance from the following institutions—
  (a) Ethics and Anti-Corruption Commission,
  (b) Kenya Revenue Authority;
  (c) Higher Education Loans Board,
  (d) Directorate of Criminal Investigations; and
  (e) Office of the Registrar of Political Parties.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
Thursday, 14th November 2024

"For the Welfare of Society and the just Government of the People"

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—
(1) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 3) BILL, (NATIONAL ASSEMBLY BILL NO. 44 OF 2024);
(2) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2024);
AND
(3) THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 48 OF 2024)

INVITATION TO SUBMIT MEMORANDA AND NOTIFICATION OF PUBLIC HEARINGS

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024), the Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024) and **the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** were Read a First Time on Wednesday, 13th November, 2024, and thereafter committed to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House.

IT IS NOTIFIED that—

(1) The **Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024)** is a Bill sponsored by **the Leader of the Majority Party** which seeks to amend the Public Finance Management Act, Cap. 412A, to provide for the financing of transferred functions between the two levels of government in accordance with Article 187 of the Constitution.
The Bill provides that transferred functions shall continue to be funded from previous sources as contained in the approved budgets of the transferring level of government and that the cost of the transferred functions shall be based on the costing framework provided in the national and county government manuals.
Additionally, the Bill provides that a transfer agreement between the two levels of government shall include a provision on acquisition, disposal and transfer of assets and liabilities. Further, that the transferring level of government shall be required to prepare cash flow projections based on revenue projections from various sources of revenue.
Further, the Bill provides for the obligation of the accounting officer in a county government and the accounting officer in the national government to submit quarterly and annual financial and non-financial report in case of a transfer of function between the two levels of government.

(2) The **Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024)** is a Bill sponsored by **the Leader of the Majority Party** which seeks to amend the **Public Finance Management Act (Cap. 412A)** to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary National Treasury to ensure compliance; and provide a framework for implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board.

(3) The **Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** is a Bill sponsored by the **Hon. Kuria Kimani, MP** which seeks to amend the **Public Procurement and Asset Disposal Act (Cap. 412C)** to—
  (a) provide for new definitions including "debarment", "foreign firm", "foreign funded procurement", "investigative agency", "joint venture procurement", "local firm", and "minor deviation";
  (b) ensure that foreign procurement contracts that have not been subjected to provisions international procurement guidelines or laws, adhere to Kenya's procurement laws;
  (c) mandate the Public Procurement Regulatory Authority to monitor and evaluate technology, knowledge and skills transfer programmes and provide annual reports;
  (d) include a representative from the Law Society of Kenya as a member of the Public Procurement Regulatory Board ("Board");
  (e) mandate each County Treasury to ensure that the procurement function prioritizes procurement of goods and services manufactured in that respective county;
  (f) to allow the Authority, a public institution or any other person to refer actions that constitute offences under the Act to an investigative agency;
  (g) enable investigations to proceed despite the fact that the issues under investigation are in relation to an issue that the Review Board is reviewing or has reviewed under the relevant provisions of the Act;
  (h) limit the period that a person can be debarred from public procurement and approve any debarment done by an international agency recognized in Kenya;
  (i) task an accounting officer to ensure that locally produced products or services are prioritized and technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;
  (j) prescribe the threshold for procurement that shall be awarded to a local firm and to prescribe a penalty for any person who registers a firm on behalf of a foreigner for purposes of benefiting for a procurement that falls within a prescribed threshold,
  (k) require procuring entities to set out in their standard tender documents specific goods, works and services to be undertaken by a local firm in joint venture procurement where a procurement is of a value exceeding one billion shillings;
  (l) provide that a clarification of a tender shall not add any new document or information;
  (m) provide additional forms of conduct of due diligence by an evaluation committee to include visiting contractor's offices, inspection of plant, equipment and completed works and confirmation of the validity of documents presented;
  (n) prohibit citizen contractors who become successful tenderers from sub-contracting to foreign companies unless the knowledge, skill, good or service is not available in the country;
  (o) obligate procuring entities to seek the advice of the Attorney-General before accepting bids from a foreign company;
  (p) include a transfer of skills and technology plan as part of the tender documents;
  (q) provide the process for issuing a letter and notification of award to the next lowest evaluated tenderer where a successful tenderer fails to sign the contract;
  (r) provide for prompt and timely payments to a contractor upon completion of contractual obligation;
  (s) obligate the Authority to ensure that priority is given to citizen contractors in the sub-contracting of tenders;
  (t) provide for an offence for an accounting officer or his or her appointed representative who fails to ensure that the goods, works and services are of the right quality and quantity;
  (u) give preference to procurement of locally skilled and unskilled labour;
  (v) increase the maximum amounts for citizen contactors, to prohibit subcontracting of local procurement contracts to foreign contractors and to prioritise contractors from respective counties where a project is fully funded by the county government unless such services are unavailable;
  (w) provides for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers;
  (x) empower the Cabinet Secretary to prescribe the Preferential Procurement Master Roll;
  (y) align the provisions of the Act to the Court of Appeal (Organization and Administration) Act and the Civil Procedure Act;
  (z) provide for an offence of a contractor who submits substandard quality of works, goods or services and also a person who certifies substandard goods or works; and
  (aa) provide for mandatory fines for instances where an offence results in a benefit or loss

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning**

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and the Bill that the submission relates to and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to financecommittecna@parliament.go.ke to be received **on or before Friday 22nd November 2024 at 5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on http://parliament.go.ke

IT IS FURTHER NOTIFIED that the Departmental Committee on Finance and National Planning shall hold Public hearings on the Bills on **Friday 22nd November, 2024** and **Saturday, 23rd November, 2024** at the **Mini Chamber, 1st Floor, County Hall, Parliament Buildings** from **10.00am to 5.00pm.**

The Committee shall discuss the contents of the Bills and their implications during the hearings. Members of the public are invited to attend and share their views on the Bills during the sessions.

Copies of the Bills are available at the National Assembly Table Office or http://www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

"For the Welfare of Society and the just Government of the People"

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF SESSIONAL PAPER NO. 6 OF 2024 ON THE NATIONAL AVIATION POLICY

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament;

AND WHEREAS Sessional Paper No. 6 of 2024 on the National Aviation Policy was submitted to the National Assembly and referred to the Departmental Committee on Transport and Infrastructure for consideration and reporting to the House;

IT IS NOTIFIED that **Sessional Paper No. 6 of 2024 on the National Aviation Policy** seeks to strengthen Kenya's position in the global aviation industry. Specifically, the Policy seeks to—

(1) foster growth of the aviation business in Kenya to support job creation;
(2) maximize contribution of the aviation sector to Kenya's economic growth and development;
(3) enhance Kenya's connectivity nationally and internationally by ensure safe, secure and competitive access;
(4) maintain aviation safety through robust, effective and efficient regulation;
(5) promote high level of competition among airlines operating in Kenya while protecting the consumers and country's national interests;
provide a regulatory framework for aviation that reflects best international practice;
develop aviation infrastructure; and
(8) Support aviation training institutions in preparing young skilled professionals.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution, the Clerk of the National Assembly hereby invites the public to submit memoranda on the Sessional Paper to the Departmental Committee on Transport & Infrastructure.

Copies of the Sessional Paper are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to cna@parliament.go.ke to be received on or before **Friday, 22nd November 2024** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

"For the Welfare of Society and the just Government of the People"

ARM Cement PLC (In Liquidation)
Office 5B, 1st Floor, Tower I, The Mirage, Chiromo Road, Westlands
P.O.BOX 41908 – 00100
Nairobi, Kenya

To Creditors,
ARM Cement PLC (In Liquidation)
P.O. Box 41908 – 00100
Nairobi, Kenya

12 November 2024

Dear Sirs/Madams

Subject: Notice of a Meeting of the Creditors of ARM Cement PLC (In Liquidation) ("ARM" or "the Company")

As you [illegible] were, the Company was placed under Administration effective 17 August 2018 pursuant to Section 534 (1) of the Insolvency Act 2015 of Kenya ("the Act"). The compa[illegible] subsequently placed in liquidation effective 1 October 2021.

Section [illegible] of the Act provides that, if the liquidation of the Company continues for a period of twelve months or more, the Liquidator shall convene a meeting of the Creditors to be held:

(a) within three months after the end of that period of twelve months; and
(b) within three months after the end of each subsequent period of twelve months

In line with the above, notice is therefore hereby given that a third Meeting of the Creditors of ARM Cement PLC (In Liquidation), will be held virtually on **Monday, 2 December 2024 at 10.00 a.m. - 12.00 p.m. EAT**. The purpose of the meeting will be to lay before the meeting the account of the Liquidators' acts and dealings, and of the conduct of the liquidation during the preceding year.

i) Creditors wishing to participate in the meeting should register for the meeting by doing the following:
a) Dialing ***483*302#** for all networks and follow the various prompts regarding the registration process; or
b) Sending an email request to be registered to **info@comp-rite.com**; or
c) Creditors with registered email addresses will receive a registration link via email through which they can use to register
d) Creditors with registered telephone numbers will receive a short message service (SMS) prompting them to register for the meeting

ii) Creditors wishing to raise any questions or clarifications regarding the meeting may do so:
a) By dialing the USSD code above and selecting the option [ask Question] on the prompts (For Creditors who will have registered to participate in the meeting)
b) By sending their written questions by email to **info@comp-rite.com**
c) to the extent possible, physically delivering their written questions to Comp-rite Kenya Limited at 2nd Floor, Muthaiga Mini Market, Limuru Road; or
d) Sending their written questions by registered post to Comp-rite Kenya Limited at P.O. Box 63428 - 00619 Nairobi

iii) Creditors entitled to attend the meeting are entitled to appoint a proxy to attend and ask questions on their behalf. A proxy need not be a member of the Company. The appointed proxy will need access to a mobile telephone. A proxy must be signed by the appointer or his attorney duly authorized in writing. If the appointer is a body corporate, the instrument appointing the proxy shall be given under its common seal or under the hand of an officer or duly authorized attorney of such body corporate. A completed form of proxy should be emailed to **info@comp-rite.com** or delivered to Comp-rite Kenya Limited, 2nd Floor, Muthaiga Mini Market, Limuru Road, P.O. Box 63428-00619 Nairobi so as to be received not later than Friday, 29 November 2024 at 11.00 a.m.

iv) The meeting will be streamed live via a link which shall be provided to all Creditors who will have registered to participate in the meeting. Duly registered Creditors and proxies will receive a short message service (SMS/USSD) prompt on their registered mobile numbers, 24 hours prior to the meeting acting as a reminder of the meeting. A second SMS/USSD prompt shall be sent three hours ahead of the meeting reminding duly registered Creditors and proxies that the meeting will begin in three hours' time and providing a link to the live stream.

v) Ahead of the meeting, the Liquidators will circulate a report to creditors by COB Monday, 25 November 2024. Any creditor that does not receive a copy of this report by this date can reach out to us at **ke_arm_administrators@pwc.com** for a copy of the report.

vi) The Liquidators have also been making distributions to creditors in relation to their claims as submitted in the Administration/Liquidation of the Company. Any unsecured creditor that has not received at least four dividend distributions should bring this to the attention of the liquidators through **ke_arm_administrators@pwc.com**.

The Joint Liquidators act on behalf of the Company **without any personal liability**.

Yours faithfully,
For and on behalf of
ARM Cement PLC (In Liquidation)

George Weru
Joint Liquidator
Without Personal Liability

c/o Martin Thathi and George Weru
PwC Tower, Waiyaki Way/Chiromo Road, Westlands
P.O Box 43062 - 00100, Nairobi
T: +254 (20)285 5000 / F: +254 (20)285 5001
Email: ke_arm_administrators@pwc.com
The Joint Liquidators act as agents of the Company and contract without personal liability

---

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—
(1) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 3) BILL, (NATIONAL ASSEMBLY BILL NO. 44 OF 2024);
(2) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2024);
AND
(3) THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 48 OF 2024)

INVITATION TO SUBMIT MEMORANDA AND NOTIFICATION OF PUBLIC HEARINGS

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024), the Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024) and **the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** were Read a First Time on Wednesday, 13th November, 2024, and thereafter committed to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House.

IT IS NOTIFIED that—

(1) The **Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024)** is a Bill sponsored by **the Leader of the Majority Party** which seeks to amend the Public Finance Management Act, Cap. 412A, to provide for the financing of transferred functions between the two levels of government in accordance with Article 187 of the Constitution.
The Bill provides that transferred functions shall continue to be funded from previous sources as contained in the approved budgets of the transferring level of government and that the cost of the transferred functions shall be based on the costing framework provided in the national and county government manuals.
Additionally, the Bill provides that a transfer agreement between the two levels of government shall include a provision on acquisition, disposal and transfer of assets and liabilities. Further, that the transferring level of government shall be required to prepare cash flow projections based on revenue projections from various sources of revenue.
Further, the Bill provides for the obligation of the accounting officer in a county government and the accounting officer in the national government to submit quarterly and annual financial and non-financial report in case of a transfer of function between the two levels of government.

(2) The **Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024)** is a Bill sponsored by **the Leader of the Majority Party** which seeks to amend the **Public Finance Management Act (Cap. 412A)** to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary National Treasury to ensure compliance; and provide a framework for implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board.

(3) The **Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** is a Bill sponsored by the **Hon. Kuria Kimani, MP** which seeks to amend the **Public Procurement and Asset Disposal Act (Cap. 412C)** to—
(a) provide for new definitions including "debarment", "foreign firm", "foreign funded procurement", "investigative agency", "joint venture procurement", "local firm", and "minor deviation";
(b) ensure that foreign procurement contracts that have not been subjected to provisions international procurement guidelines or laws, adhere to Kenya's procurement laws;
(c) mandate the Public Procurement Regulatory Authority to monitor and evaluate technology, knowledge and skills transfer programmes and provide annual reports;
(d) include a representative from the Law Society of Kenya as a member of the Public Procurement Regulatory Board ("Board");
(e) mandate each County Treasury to ensure that the procurement function prioritizes procurement of goods and services manufactured in that respective county;
(f) to allow the Authority, a public institution or any other person to refer actions that constitute offences under the Act to an investigative agency;
(g) enable investigations to proceed despite the fact that the issues under investigation are in relation to an issue that the Review Board is reviewing or has reviewed under the relevant provisions of the Act;
(h) limit the period that a person can be debarred from public procurement and approve any debarment done by an international agency recognized in Kenya;
(i) task an accounting officer to ensure that locally produced products or services are prioritized and technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;
(j) prescribe the threshold for procurement that shall be awarded to a local firm and to prescribe a penalty for any person who registers a firm on behalf of a foreigner for purposes of benefiting for a procurement that falls within a prescribed threshold;
(k) require procuring entities to set out in their standard tender documents specific goods, works and services to be undertaken by a local firm in joint venture procurement where a procurement is of a value exceeding one billion shillings;
(l) provide that a clarification of a tender shall not add any new document or information;
(m) provide additional forms of conduct of due diligence by an evaluation committee to include visiting contractor's offices, inspection of plant, equipment and completed works and confirmation of the validity of documents presented;
(n) prohibit citizen contractors who become successful tenderers from sub-contracting to foreign companies unless the knowledge, skill, good or service is not available in the country;
(o) obligate procuring entities to seek the advice of the Attorney-General before accepting bids from a foreign company;
(p) include a transfer of skills and technology plan as part of the tender documents;
(q) provide the process for issuing a letter and notification of award to the next lowest evaluated tenderer where a successful tenderer fails to sign the contract;
(r) provide for prompt and timely payments to a contractor upon completion of contractual obligation;
(s) obligate the Authority to ensure that priority is given to citizen contractors in the sub-contracting of tenders;
(t) provide for an offence for an accounting officer or his or her appointed representative who fails to ensure that the goods, works and services are of the right quality and quantity;
(u) give preference to procurement of locally skilled and unskilled labour;
(v) increase the maximum amounts for citizen contactors, to prohibit subcontracting of local procurement contracts to foreign contractors and to prioritise contractors from respective counties where a project is fully funded by the county government unless such services are unavailable;
(w) provides for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers;
(x) empower the Cabinet Secretary to prescribe the Preferential Procurement Master Roll;
(y) align the provisions of the Act to the Court of Appeal (Organization and Administration) Act and the Civil Procedure Act;
(z) provide for an offence of a contractor who submits substandard quality of works, goods or services and also a person who certifies substandard goods or works; and
(aa) provide for mandatory fines for instances where an offence results in a benefit or loss.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning**.

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and the Bill that the submission relates to and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to financeandnationalplanning@parliament.go.ke to be received **on or before Friday 22nd November 2024 at 5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on http://parliament.go.ke

IT IS FURTHER NOTIFIED that the Departmental Committee on Finance and National Planning shall hold Public hearings on the Bills on **Friday 22nd November, 2024** and **Saturday, 23rd November, 2024** at the **Mini Chamber, 1st Floor, County Hall, Parliament Buildings** from **10.00am to 5.00pm**.

The Committee shall discuss the contents of the Bills and their implications during the hearings. Members of the public are invited to attend and share their views on the Bills during the sessions.

Copies of the Bills are available at the National Assembly Table Office or http://www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

"For the Welfare of Society and the just Government of the People"

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
NAIROBI, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: [illegible]
www.parliament.go.ke/the-national-assembly

When replying, please quote
REF: NA/DDC/F&NP/2024/ (126)

15th November 2024

FCPA Nancy Gathungu, CBS
Auditor-General
3rd Floor, Anniversary Towers,
University Way,
NAIROBI

Dr. Margaret Nyakang'o
Controller of Budget
The Office of Controller of Budget
Bima House, 12th Floor
Harambee Avenue,
NAIROBI

Hon. Shadrack J. Mose
Solicitor General,
State Law Office
Sheria House, Harambee Avenue
NAIROBI

Hon. Dr. Kipkurui S. Chepkwony
Secretary/Chief Executive Officer
The Intergovernmental Relations
Technical Committee (IGRTC),
Parklands Plaza, 3rd Floor, Chiromo
Lane, Westlands
NAIROBI

CPA Dr. Grace Kamau, Ph.D
Chief Executive Officer
Institute of Chartered Public Accountants of
Kenya (ICPACK)
CPA Center, Ruaraka, Thika road.
NAIROBI.

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
Delta House, Rhapta Road
NAIROBI

Ms. Faith Mony Odhiambo
President, Law Society of Kenya
Lavington, Opposite Valley Arcade
Gitanga Road
NAIROBI

Mr. Kwame Owino
Chief Executive Officer,
The Institute of Economic Affairs
1st Ngong Avenue, ACK Garden House
NAIROBI

Ms. Edna Gitachu
Associate Director,
PricewaterhouseCoopers Limited
PWC Tower, Waiyaki Way/Chiromo Road
Westlands
NAIROBI

Ms. Arwinder Sandhu
Senior Consultant
Westminster Consulting
6th Floor, the Address, Muthangari
Drive, Off Waiyaki Way
NAIROBI

Mr. Alex Mathini
Partner,
Bowmans LLP
5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chiromo Road,
NAIROBI

Mr. Daniel Ngumy
Partner
Anjarwalla & Khanna LLP
Eldama Ravine Close, Off Eldama Ravine
Road, Westlands
NAIROBI

Mr. Patrick Wanjuki
Ag. Director General
Public Procurement Regulatory Authority
6th Floor KISM Towers
Ngong Road
NAIROBI

Ms. Jane Mugo
Partner
Tax Law Advisory
I&M Bank House, 7th Floor
2nd Ngong Avenue
NAIROBI

Mr. (FCPA)Philip Muema
Managing Partner
Andersen Consulting Kenya
7th Floor, Rapta Heights
Rhapta Rd, Westlands
NAIROBI

Mr. Michael Mburugu
Regional Tax Partner
PKF Taxation Services Ltd
Kalamu House, Grevillea Grove,
Off Brookside Drive, Westlands
NAIROBI

Mr. Fred Omondi
Partner, Tax & Legal Leader
Delloitte en Touche
Parklands/Highridge, Waiyaki Way,
Deloitte Plc
NAIROBI

Mr. Alex Kanyi
Cliffe Dekker Hofmeyr (Kieti Law LLP)
Merchant Square, Block D, 3rd Floor
Riverside Drive
NAIROBI

Mr. Ernest Muriu
Partner
Ernest & Martin Associates
Certified Public Accountants
Haven Court, Block B, Rm
Slip Road off Waiyaki Way,
NAIROBI

Ms. Jilna Shah,
Tax Director,
RSM (Eastern Africa)
1st Floor, Pacis Centre, slip rd
Off Waiyaki Way
NAIROBI

Mr. Jeff Kiraguri
Legal and Tax Associate
Grant Thornton
5th Floor,
Avocado Towers,
Muthithi Rd,
NAIROBI,

Ms. Diana Gichengo
Executive Director
The Institute for Social Accountability
Westlands Avenue, Wendy Court,Hse
no.10,David Osieli Rd, Westlands
NAIROBI

Eng. Joseph Anvar A lot
Chief Executive Officer
Roads and Civil Engineering Contractors Association
Simba Sikh Union, Parklands,
NAIROBI

Mr. George Aluru
Chief Executive Officer
Energy Sector Contractors Association
NAIROBI

Chief Executive Officer
Federation of Kenya Registered Electrical Engineers
Thika Super Highway,
Waka Business Centre
NAIROBI

Ms Carole Kariuki
Chief Executive Officer
Kenya Private Sector Association
7th Floor, South Tower, Two Rivers,
Limuru Rd,
NAIROBI

Mr. Kenneth Matiba
Chief Executive Officer
Kenya Institute of Supply Management
KISM TOWERS, 12th Floor, Ngong Road,
NAIROBI

CPA James Katule
Chief Executive Officer/ Commission Secretary
Commission on Revenue Allocation
14 Riverside Drive, 2nd Floor
NAIROBI

Hon. Sabulei Philemon Kiplangat
The Chairperson
County Assembly Forum
Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill,
NAIROBI

Mr. Raimond Molenje
Ag. Chief Executive Officer Kenya Bankers Association
13th Floor, International House
Mama Ngina Street
NAIROBI

Mr. James Muraguri
Chief Executive Officer
Institute of Public Finance
Rosami Court, Muringa Road off Elgeyo
NAIROBI

Chief Executive Officer
Bajeti Hub
Kilimani Business Centre, Office 9,
Kirichwa Road
NAIROBI

Dear Sir/Madam

RE: STAKEHOLDER ENGAGEMENT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.3) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2024); THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.4) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2024) AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2024 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to ***study and review all the legislation referred to it.***

The Public Finance Management (Amendment) (No.3) Bill (National Assembly Bill No. 44 of 2024); The Public Finance Management (Amendment) (No.4) Bill (National Assembly Bill No. 45 of 2024) and The Public Procurement And Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024) underwent the First Reading pursuant to Standing Order 127(3) on **Wednesday, 13th November 2024** and were committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House. The principal object of the Bill (s) is as follows;

1. **The Public Finance Management (Amendment) (No.3) Bill (National Assembly Bill No. 44 of 2024)**

The Bill seeks to provide for the financing of transferred functions between the two levels of government in accordance with Article 187 of the Constitution. The Bill provides that transferred functions shall continue to be funded from previous sources as contained in the approved budgets of the transferring level of government and that the cost of the transferred functions shall be based on the costing framework provided in the national and county government manuals.

2. **The Public Finance Management (Amendment) (No.4) Bill (National Assembly Bill No. 45 of 2024)**

The Bill seeks to amend the Public Finance Management Act (Cap. 412A) to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary National Treasury to ensure compliance and provide a framework for implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board.

3. **The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)**

The principal object of the bill is to amend the Public Procurement and Asset Disposal Act (Cap 412C) to prescribe the threshold of procurements that shall be awarded to local firms to promote the growth of local industries. The Bill also prescribes a penalty for any person who registers a firm on behalf of a non-Kenyan for purposes of benefitting from a procurement that falls within a prescribed threshold.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to receive your submission and comments on the said Bill(s). The meeting will be held on **Friday, 22nd November and Saturday, 23rd November 2024** at **Mini Chamber, County Hall, Parliament Buildings** from 9.00 a.m. as per the attached schedule.

You are requested to prepare comprehensive submissions on **any representations you may have of the Bill (s)** and email a soft copy to cna@parliament.go.ke on or before the day of the meeting. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The Committee's Liaison Officers for the meeting are **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or **email address:** benjamin.magut@parliament.go.ke; **Mr. Benson Kamande** of telephone number **0789459387** or **email address:** benson.kamande@parliament.go.ke or **Ms. Winfred Kambua** on Tel. No **0720571777** or email address winfred.kilonzo@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to **H.E FCPA Ahmed Abdullahi, EGH**
Chairperson
Council of Governors
Delta House, Rhapta Road
NAIROBI

Public Finance Management (Amendment) (No. 3) Bill, 2024

The Public Finance Management (Amendment) (No 4) Bill,2024

WESTMINISTER
CONSULTING

WESTMINISTER
CONSULTING

Westminister Consulting
The Address, 6th Floor
Muthangari Drive, off Waiyaki Way
P. O Box 2881-00606
Nairobi, Kenya
Tel: +254 723 658 444
info@westministerconsulting.com
www.westministerconsulting.com

20th November 2024

The Clerk
The National Assembly
Office of the Clerk
Main Parliament Building
Nairobi

Dear Sir,

Submission of Memoranda

The Public Finance Management (Amendment) (No 3) Bill, 2024 & The Public Finance Management (Amendment) (No 4) Bill

We write to you in response to your invitation for public participation and submission of memoranda in line with your advert. We thank you for this opportunity and would like to put forth our submissions on the above Bills in the ensuing pages of this document for your consideration.

We trust that you will find our overall approach both comprehensive and compelling. If you have any questions or require more clarification, please do not hesitate to contact us.

Yours sincerely,

George Mbatai
Lead Consultant

The Public Finance Management (Amendment) (No 3) Bill

WESTMINSTER CONSULTING

Section 186A – Transfer Agreement

What It Introduces:

Defines a "transfer agreement" as a legally binding framework for delegating functions, powers, or competencies between national and county governments, as per Section 26 of the Intergovernmental Relations Act.

Our View:

•The amendment ensures all transfers are formalized and governed by a uniform, well-defined agreement.

•Reduces risks of disputes and misunderstandings between government levels.

Implications:

•Standardization of agreements enhances predictability and clarity.

•Strengthens intergovernmental coordination by providing legal safeguards and a consistent process.

•Lays the groundwork for transparency and accountability in transferred functions.

Section 186B – Applicability to Function Transfers

What It Clarifies:

•This section specifies that the amendments apply to transfers as outlined under Article 187 of the Constitution and Sections 24 and 28 of the Intergovernmental Relations Act.

Our View:

•Aligns the Act with existing constitutional provisions, ensuring consistency in the legal framework.

•Clearly delineates the scope of application to avoid ambiguity.

Implications:

•Reinforces legal certainty by linking statutory requirements directly to constitutional mandates.

•Provides clarity for stakeholders, ensuring all transfers follow a unified approach.

Section 186C – Financing Transferred Functions

What It Proposes:

•Transferred functions will continue to be funded from existing sources in approved budgets.

•Additional funding requirements will be determined through consultations and detailed in transfer agreements.

Our View:

•Ensures continuity in service delivery during transitions.

•Establishes a collaborative mechanism for addressing funding gaps.

Implications:

•Prevents interruptions in public services by maintaining funding flows.

•Promotes joint decision-making on financial resources, strengthening intergovernmental relationships.

•Enhances operational efficiency by streamlining the allocation and disbursement process through clear agreements.

Section 186D – Costing Transferred Functions

What It Proposes:

•Costs will be determined using standardized frameworks provided in national and county government manuals.

•Financial estimates will form the basis for determining additional allocations.

•Separate schedules in budget estimates will outline these allocations for both national and county governments.

Our View:

•A standardized costing framework ensures fairness and accuracy in resource allocation.

•Clear budget presentations promote transparency and facilitate oversight.

Implications:

•Prevents resource allocation discrepancies between national and county governments.

•Enhances accountability by mandating legislative approval for all budget estimates.

•Promotes effective fiscal management and minimizes risks of mismanagement.

Section 186E – Management of Assets and Liabilities

What It Proposes:

•Transfer agreements must address acquisition, disposal, and transfer of assets and liabilities.

•Receiving governments are required to maintain accurate registers and ensure proper handover upon expiration of the transfer period.

Our View:

•Establishes clear protocols for asset and liability management, preventing disputes.

•Strengthens accountability and compliance through mandated record-keeping.

Implications:

•Enhances transparency and facilitates effective audits.

•Minimizes risks of mismanagement or disputes over asset ownership.

•Provides structured processes for seamless asset transfers, fostering trust between governments.

Section 186F – Cash Flow Projections

What It Proposes:

•Transferring governments must prepare cash flow projections based on revenue estimates.

•Projections must be published within 15 days of the transfer period's commencement.

Our View:

•Mandates forward-looking financial planning for effective resource allocation.

•Promotes transparency through timely publication of projections.

Implications:

•Enables informed decision-making by providing accurate revenue forecasts.

•Fosters public trust and accountability through accessible financial data.

•Ensures efficient resource management by preventing delays in execution.

Section 186G – Quarterly and Annual Reports

What It Proposes:

•Requires accounting officers to submit quarterly and annual financial and non-financial reports.

•Reports must be submitted to oversight bodies such as the Senate, National Assembly, and County Assemblies.

Our View:

•Ensures continuous monitoring of transferred functions.

•Facilitates effective oversight and decision-making by providing detailed performance data.

Implications:

•Guarantees accountability in resource utilization.

•Minimizes risks of mismanagement or operational inefficiencies.

•Promotes transparency and builds trust between national and county governments.

The Public Finance Management (Amendment) (No 4) Bill

Section 50 – Obligations and Restrictions on National Guaranteeing and Borrowing

Key Provisions

•The amendment replaces subsection (2C) with a new provision stating that the thresholds for borrowing (subsections 2A and 2B) will come into effect five years from the commencement of the Act.

•Subsections (2A) and (2B) limit national government borrowing to **55% of GDP**.

•The Cabinet Secretary must take measures within five years to ensure compliance with this threshold.

Implications

•***Deferred Borrowing Limits***: By delaying the enforcement of borrowing thresholds from 2027 to 2029, the government gets additional fiscal flexibility, easing pressure on its tight budgetary constraints.

•***Opportunity for Fiscal Restructuring***: This extension offers the government time to stabilize debt levels, implement economic reforms, and align with sustainable borrowing practices.

•***Potential Risks***: Delayed implementation could result in prolonged reliance on excessive borrowing, increasing debt servicing costs and crowding out critical development spending.

Section 194 – Functions of the Board: Paragraph (h) – Framework for Accrual Accounting

Key Provisions

•Introduces a framework for implementing **accrual accounting** across government institutions.

•Accrual accounting records revenues and expenses when incurred rather than when cash is received or paid.

Implications

•***Enhanced Accountability***: Enables the government to account for expenditures and revenues more accurately, especially addressing the issue of pending bills in counties.

•***Improved Supplier Payments***: Ensures suppliers who worked in a previous financial year can be paid in subsequent years, reducing delays and financial strain.

•***Reduction of Year-End Spending Pressure***: Eliminates the practice of exhausting budgets by the fiscal year's end, fostering better financial management.

•***Transparency in Revenue Matching***: Facilitates proper revenue recognition by matching expenses and revenues to the correct financial period, thereby improving financial reporting.

Section 194 – Functions of the Board: Paragraph (i) – Risk Management Framework

Key Provisions

•Introduces a **risk management framework** to identify, assess, and mitigate financial and operational risks within government institutions.

Implications

•***Enhanced Financial Oversight***: Provides a continuous mechanism to address risks like insolvency and revenue shortfalls, particularly in county governments.

•***Addressing Wage Concerns***: Ensures more accountability in payroll management, reducing instances of "ghost workers" and unsustainable salary expenditures (currently exceeding 30% of revenue in some counties).

•***Strengthened Financial Planning***: Supports government institutions in proactively managing risks, ensuring long-term fiscal sustainability.

Section 194 – Implementation Timeline for Accrual Accounting (Subsection 6)

Key Provisions

•Allows a **three-year transition period** for the implementation of the accrual accounting framework.

•During this period, institutions will continue operating on the cash accounting system.

Implications

•***Challenges of Dual Accounting***: The coexistence of cash and accrual systems during the transition creates ambiguities regarding which transactions fall under which system.

•***Recommendation for Immediate Implementation***:

- Immediate adoption would ensure pending bills and revenues are fully accounted for in the next financial year.
- Operating under a single accounting system prevents discrepancies and improves fiscal transparency.

•***Clear Guidelines Needed***: The Bill lacks clarity on the treatment of specific transactions under both systems, creating potential inconsistencies in financial reporting.

Contacts

GEORGE MBATAI

Partner

gmbatai@westministerconsulting.com

Tel No. : +254 722 729 831

Mr. Samuel Njoroge
Clerk of National Assembly,
P. O. Box 41482-00100 Nairobi
23rd November 2024

Dear Sir,

RE: OKOA UCHUMI SUBMISSIONS ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILLS AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL

The Okoa Uchumi Campaign is a civil society platform working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability, and bolster constitutional safeguards in public debt management, for debt sustainability through a balanced and equitable budget.

The Institute for Public Finance and the Institute for Social Accountability as sector experts in the coalition prepared this joint proposal for The National Assembly on the Campaign's recommendations to be considered in the Public Finance Management Amendment Bills and the Public Procurement and Asset Disposal Amendment Bill 2024. The submission highlights the proposed amendment to the law, supported by a statement on the issues to be addressed and a justification for the proposed amendments. We available to highlight our submissions to the Finance and National Planning Departmental Committee. We look forward to hearing from you and engaging in this important national exercise that will shape the fiscal landscape of Kenya.

Yours sincerely,

Diana Gichengo,
Executive Director TISA

CC Mr. Benson Kamande ;Clerk National Assembly Departmental Committee on Finance and National Planning

INTRODUCTION

The 13th Parliament approved the Public Finance Management (Amendment) Bill 2023 on June 2023 before it was assented into law by the President in October 2023 and implementation commenced by November 2023 changing the debt ceiling from Ksh.10 trillion to a debt anchor of 55% of GDP in present value in Section 50 of PFM Act[1]. The amendment further introduced subsection 2C allowing the Cabinet Secretary five years to comply with the debt anchor[2]. One year later, Members of the National Assembly are taking the public to the same section and subsections not to safeguard the fiscal responsibility principles but to create room for more borrowing by removing the 55% debt anchor that was breached before implementation. Public debt as a percentage of GDP in present value stood at 67% in December 2022 and increased to 68.2% in December 2023 before slightly declining to 67.2% in December 2024[3]. While the 2024 Budget Review and Outlook Paper (BROP) suggests sustainable debt levels, the International Monetary Fund assessment places Kenya at a high risk of default. As indicated above, setting the 55% debt anchor and allowing more compliance period to the CS Treasury continuously debased the economy by overseeing wanton borrowing. Following a similar strategy after one yearis not right because the focus should be on sustainability and reduction of the public debt stock by ensuring the National Government only borrows to finance development expenditure as opposed to allocating only 46% (Ksh.350.7 billion) of the Kshs.766.4 billion borrowed in FY 2023/24 to development[4]. Other indicators such as the debt-to-exports ratio in present value, Public and Publicly Guaranteed external debt-to-exports and PPG debt service-to-revenue ratios have all breached the set threshold to confirm how unsustainable the situation remains[5].

While the Medium-Term Debt Management Strategy and BROP focus more on enhanced revenue mobilization through tax policy and administrative reforms, we propose that the National Assembly and the Executive to fast track the roll out of an end-to-end e-procurement system to increase transparency. The President in his State of the Nation Address revealed that it has taken the National Treasury 10 years to achieve, hence the need for parliament's support towards realizing the 2025 Quarter one deadline. E-procurement is vital for prudent debt management because it will reflect acquired debts in principal amounts and automatically calculate the interest at agreed rates. Conversely, as of 30th June 2024, Pending Bills in the National Government pilled to Ksh.516.3 billion with State Corporations commanding the largest charge at 73.6% with the highest claims being for contractors[6]. Another aspect highlighted in the BROP that should be of priority is the implementation of accrual accounting for seamless cash management for all government assets and liabilities. Zero-based budgeting is another way to curb the ever-increasing recurrent expenditure that exacerbates budgets thus contributing to more borrowing. The current austerity measures were not objective because they primarily targeted devolution through counties, Judiciary, Parliament, and independent institutions. At the same time, the Executive budget still accounted for 97% of allocations to the National Government, thus highly contributing to the Executive capture and compromise in oversight roles. Cutting down the number of

[1] https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2023/ThePublicFinanceManagement_Amendment_Act_2023.pdf
[2] https://www.businessdailyafrica.com/bd/economy/mps-approves-conversion-of-sh10trn-debt-ceiling-to-anchor-4280354
[3] https://www.treasury.go.ke/wp-content/uploads/2024/10/2024-Budget-Review-and-Outlook-Paper.pdf
[4] http://parliament.go.ke/sites/default/files/2024-02/2024%20Medium-Term%20Debt%20Management%20Strategy_1.pdf
[5] https://taxjusticeafrica.net/sites/default/files/publications/Hanging%20on%20a%20Precipice.pdf
[6] https://www.treasury.go.ke/wp-content/uploads/2024/10/2024-Budget-Review-and-Outlook-Paper.pdf

advisors under the Presidency, unconstitutional appointments and positions, merging state corporations duplicating roles is crucial in freeing up funds for enhanced service delivery.

The identified issues confirm where the priority for prudent public debt management lies. Therefore, we are convinced that amending section 50 of the PFM Act annually to allow reckless borrowing with a five-year compliance period to the CS Treasury cannot be a Kenyan Priority at a time when parliament and the Office of the Auditor General are not sure of the actual debt stock contrary to Article 211 of the Constitution of Kenya, 2010. Based on the above position, TISA and IPF submit their views as follows:

The Public Finance Management (Amendment) (No. 3) Bill, 2024				
Clause 2: Financial Management in the Transfer of Functions	-	The Bill introduces amendments to Section 186 of the Public Finance Management Act, incorporating new provisions to streamline the financing of functions transferred between the national and county governments. It stipulates that such transferred functions will continue to be funded from the sources as outlined in the approved budgets of the transferring level of government. Additionally, the cost of the transferred functions will be determined based on the costing framework detailed in the manuals of the national and county governments. Furthermore, the Bill requires that any transfer agreement between the two levels of government must include provisions addressing the acquisition, disposal, and transfer of assets and liabilities. It also mandates that the transferring level of government prepares cash flow projections based on anticipated revenue from various sources, ensuring a	These provisions are a significant and commendable development, as they provide much-needed clarity on the financing framework for functions transferred between county and national governments—a process that has faced numerous challenges in the past. By aligning with Article 187 of the Constitution, which governs the transfer of functions between levels of government, the amendments ensure that transferred functions are financed based on the approved budget allocations of the transferring government. Additionally, the provisions place a clear obligation on the government receiving the transferred functions to publish cash flow projections and quarterly implementation reports. This promotes transparency and accountability in the management and execution of transferred functions, addressing existing gaps in the transfer process.	

		structured and transparent approach to resource allocation.		
The Public Finance Management (Amendment) (No.4) Bill, 2024				
Clause 2: Amendment of Section 50 of the Principal Act	The previous proposition stated that the Cabinet Secretary should take measures to ensure that the borrowing by the national government complies with the threshold prescribed in subsection 2A in a period of no later than five years after the commencement date of subsections 2A and 2B.	The bill amends section 50 by deleting the previous subsection 2C and inserting a new one that states that the provisions of subsection 2A and 2B shall come into force five years after the date of commencement of the Act.	This is meant to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary and National Treasury for compliance, thus moving compliance requirements to the 14th Parliament. Debt sustainability and prudence was at the core of the current regime's manifesto and campaigns. Capped with unattainable living costs, the country cannot afford the luxury of allowing further borrowing sprees with the hope of postponing the debt problem. If unchecked and assumed, this amendment will escalate inequality in carrying the debt burden between current and future generation	Delete the proposal.
		The bill introduces a new subsection after subsection 2C that states that the Cabinet Secretary is to ensure that the borrowing by the National government complies with the threshold prescribed in subsection 2A within a period of no later than five years after the commencement date.	The introduction of this new subsection extends the debt threshold by five years after the Act's commencement which allows the government an opportunity to borrow without being constrained by the current debt limit of 55% of GDP. This creates room for increased borrowing in the short term which would lead to significant increase in Kenya's overall debt.	Delete the proposal.
Clause 3: Amendment of Section 194 of the Principal Act		The bill inserts paragraphs (h) and (i) in subsection (1) and new subsection (6) for the framework of the implementation of accrual accounting by the government and the risk management framework by the Public Sector Accounting Boards.	This is meant to ensure that the government has a clear picture of its financial obligations, improves its financial management and enhances the public sector financial reporting as accrual accounting records financial transactions when they are incurred, hence improving transparency and governance. It will also help to deal with the	Adopt the proposal.

		The subsection shall also include a transition period of three years from the commencement date.	problem of pending bills and other contingent liabilities .	

Public Finance Management (Amendment) No 2 Bill 2024 :

We support the proposed amendments because they clarify revenue-raising and budgeting measures at county level and the proposals create a good sense of uniformity with the procedures for the national government as outlined in the Medium-Term Debt Management Strategy and the 2024 Budget Review and Outlook Paper.

The Public Procurement and Asset Disposal Act No 48 of 2024

Overall we welcome the strengthening of procurement principles to give effect to articles 10 and 201 of the constitution. The bill has a raft of amendments that will go along way to curb graft because 70% of graft cases emerge from procurement processes. It also priorities national interest by giving priority to Kenyan Citizens in the procurement process.

Public Procurement and **Asset Disposal Act** No. 48 2024				
Clause 8	Previously, the Act indicated that there would be no investigations when an issue is before the Review Board, and no order could be allowed at such a time.	The Bill proposes to wholly delete section 40	This is a significant milestone because the section was giving the Review Board veto powers that could breed opulence, graft and lack of accountability and transparency in review processes.	Adopt the proposal
Clause 9	The bill seeks to delete subsection 4 of section 41 to substitute it for the new subsection 5	This section clarifies that a person debarred by by an international agency recognized by Kenya shall be deemed have been barred in kenya if the debarment	This will ensure that corrupt entities and conflicted or fraudulent individuals and organizations are not procured.	Adopt proposal

		procedures and proceedings were conducted in Kenya	Maintaining the integrity of the process will protect Kenyans in realizing the value for their taxes and enjoying good services.	
Clause 11:	Amendment of section 53: The bill seeks to introduce a new subsection 14	Under this sections, the bill seeks to provide penalties for a person who registers a company on behalf of a foreigner exhibiting unfair competition and seeks to benefit from the procurement under this section commits an offense	This introduction will aid in increasing and promoting domestic companies and procurement of Kenyan companies.	Adopt proposal
	The bill under subsection 15 seeks to introduce penalties for foreigners who register companies by misrepresenting themselves as being Kenyan.		This will discourage foreign entities claiming to be Kenyanfrom doing so in order to benefit from the procurement.	Adopt proposal
Clause 14:	Previously, subsection (2) of section 83 of the Act was limited to obtaining confidential references from persons with whom the tendere has had prior engagement.	The amendment expands to include, without limiting to, obtaining confidential ref from persons with whom the tender has had prior engagement, visiting their offices, inspecting of plant, equipment and completed works in addition to confirming the validity of documents presented.	This expansion is holistic and opens the scope for conducting due diligence to ensure the tender has required experience, skills and qualifications to execute the job. The approach provides an objective spectrum for qualifying a tender in an open and competitive approach.	Adopt amendment
Clause 20:	Section 139A on Prompt payment	Amendment seeks to entrench in law the culture of prompt payment.	This is a good proposal that will go along way in increasing the money in circulation, reduce on pending bills however the prompt and timely payment is not defined	Amend to provide that timely and prompt payment shall mean payment within the same quarter the invoice is paid and no later than the close of the fiscal year.

KEPSA
KENYA PRIVATE SECTOR ALLIANCE
The Voice of the Private Sector in Kenya

Ref: 329/11-PPD/2024

November 22, 2024

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
Parliament Road
NAIROBI

Dear Mr. Njoroge,

RE: STAKEHOLDER ENGAGEMENT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) [NO.3] BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2024); THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) [NO.4] BILL (NATIONAL ASSEMBLY BILL NO.45 OF 2024) AND THE PUBLIC PROCUREMENT & ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.48 OF 2024 BY THE DEPARTMENT COMMITTEE ON FINANCE AND NATIONAL PLANNING

Receive warm greetings from Kenya Private Sector Alliance (KEPSA).

We acknowledge, with thanks, receipt of your letter **[REF: NA/DDC/F&NP/2024/ (126)],** dated 15th November 2024, in which you requested our submissions regarding the amendment of The Public Finance Management Act. The specific Bills mentioned are as follows:

- The Public Finance Management (Amendment) [No. 3] Bill (National Assembly Bill No. 44 of 2024).
- The Public Finance Management (Amendment) [No. 4] Bill (National Assembly Bill No. 45 of 2024).
- The Public Procurement & Asset Disposal (Amendment) Bill (National Assembly Bill No. 48).

We acknowledge receipt of your invitation to attend a meeting on Friday, 22nd November 2024, to present our submissions on the aforementioned Bills.

KEPSA fully supports the Public Finance Management (Amendment) Bill as it seeks to strengthen financial management in the transfer of functions between levels of government. These proposed amendments are essential for enhancing efficiency in public finance management at the county level streamlining service delivery, and fostering a conducive environment for the private sector growth across both levels of government.

In this regard, we kindly request that you consider our written memorandum on the Public Procurement and Asset Disposal (Amendment) Bill, 2024, and excuse us from attending the physical oral presentations scheduled for 22nd November 2024.

We thank you for the continued support.

Yours Sincerely,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer

7th Floor, South Tower, Two Rivers, Limuru Road | P. O. Box 3556 - 00100, Nairobi, Kenya
+254 720 340949 / 735 999979 info@kepsa.or.ke www.kepsa.or.ke