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THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Public Finance Management Act, 2012 and for connected purposes

ENACTED by the Parliament of Kenya as follows—

Short title.

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2019.

Insertion of new sections 204A and 204B in No. 18 of 2012.

2. The Public Finance Management Act, 2012 is amended by inserting the following new sections immediately after section 204—

Deposit and investment of public funds.

204A. (1) A public entity shall—

(a) open and maintain an account with a government owned bank or an authorised bank;

(b) deposit its funds in a government owned bank or an authorised bank; and

(c) invest any of its surplus funds in government securities.

(2) An accounting officer of a public entity may, with the approval of the Board of the entity, apply to the Cabinet Secretary for the National Treasury for an exemption from the requirements of subsection (1).

(3) The Cabinet Secretary may, in writing, grant an exemption from the requirements of subsection (1) where—

(a) a bank or other financial institution has offered a

public entity a higher return than the return offered in writing by—

(i) a government owned bank; and

(ii) the Central Bank of Kenya on government securities;

(b) the National Treasury has not expressed an intention to borrow from the domestic market;

(c) the period of deposit or investment does not exceed twenty-one days; or

(d) the Cabinet has approved the deposit or investment.

(4) The authority of the Cabinet Secretary to grant an exemption under this section—

(a) may only be exercised in the exceptional circumstances specified in subsection (2);

(b) shall be specific to each deposit; and

(c) shall not be delegated.

(5) In granting an exemption under this section, the Cabinet Secretary shall state, in writing—

(a) the specific request to which the exemption relates;

(b) the amount approved for deposit or investment; and

(c) the period within which the deposit or investment may be made.

(6) For purposes of this section—

"authorised bank" means a bank in which the government is represented in the Board and the controlling majority of the shares or stocks are owned or held by a registered corporate entity or entities of societies operating under the Co-operative Societies Act and domiciled in Kenya.

"government owned bank" means a bank in which the government owns or holds at least twenty percent of the bank's share capital; and

"public entity" means a national government entity or a county government entity"

"surplus funds" mean funds that a public entity has no immediate use of and which are likely to remain unutilized for more than forty-five days.

(7) An accounting officer of a public entity shall take necessary measures to ensure that the public entity complies with this Act within twelve months of the commencement of this section.

(8) An accounting officer who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

Prohibition against money agents.

204B. (1) A bank shall not pay a commission, retainer or

other form of fee or compensation to a person on account of rendering the services of procuring deposits from a public entity

(2) The chief executive of a bank which contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year, or to both.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill to provide that a public entity may only deposit funds and invest surplus funds in government owned banks or a bank owned by the public through cooperative societies. The Bill defines a government owned bank as a bank in which the government owns or holds at least twenty percent of the shares bank's share capital.

The Bill further prohibits the practice of banks paying compensation to agents for procuring the deposit of funds from public bodies.

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

The Bill does not contain any provisions limiting any fundamental right or freedom.

Statement of how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning county governments.

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

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 27th February, 2019.

KIMANI ICHUNGW'AH,
Member of Parliament.