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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (SINKING FUND) GUIDELINES, 2021

(Gazette No. 5085 of 2021)

SEPTEMBER, 2021

The Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.



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|  THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 21 SEP 2021 | |
| DAY: TUESDAY | |
| TABLED BY: | CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION |
| CLERK-AT THE-TABLE: |  |

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ABBREVIATIONS

| | |
|------------|-----------------------------|
| PFM | Public Finance Management |
| LN | Legal Notice |
| RMA | Regulatory Making Authority |
| SI | Statutory Instruments |
| SO | Standing Order |

CHAIRPERSON'S FOREWORD

The Cabinet Secretary for the National Treasury & Planning, in exercise of the powers conferred by Section 50 (8) of the Public Finance Management Act, 2012 and Regulation 206 (3) of the Public Finance Management (National Government) Regulations, 2015, published the Public Finance Management (Sinking Fund) Guidelines, 2021 on 25th May, 2021 *vide Gazette Notice Number 5085 (Special Issue VOL. CXXIII). 5085 of 2021.*

Section 2 of the Statutory Instruments Act, 2013 defines guidelines as statutory instruments hence the guidelines as published have to be scrutinized as stipulated under the said Act.

The Guidelines were submitted to the Clerk of the National Assembly on 3rd June, 2021 and tabled before the House on 8th June, 2021 hence within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013, and subsequently referred to the Committee on Delegated Legislation for consideration.

The Guidelines provide for the redemption of Government bonds specifically in the redemption of stock of government debt, cushion for amortization of liabilities arising from debt, facilitation of debt restructuring and smoothening of maturity profile, building up resources for meeting maturities of loans and securities issued in the international debt capital markets by ensuring resources are available for redemption of maturing debts to alleviate rollover risks and buyback of a debt obligations in the debt market. According to the National Treasury, this would attract investors especially on foreign sovereign bond market as well as reducing any potential escalation of the interest rate expenses.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the Regulation making Authority (The National Treasury) to a consultative meeting on 1st September, 2021 to consider the said Instrument.

Further, the Committee scrutinised the Guidelines in accordance with the Constitution of Kenya, the Public Finance Management Act (*No. 18 of 2012*), the Interpretation and General Provisions Act (*Chapter 2*) and the Statutory Instruments Act (*No. 23 of 2013*) which regulate the making, scrutiny and publication of the Guidelines and made various observations which informed the decision to annul in entirety, the submitted instrument.

One of the key findings of the Committee is that the Regulations **contravene section 13(h) of the Statutory Instruments Act, 2013**. The enabling provision invoked the wrong reference as it was made under the Public Finance Management (National Government) Regulations, 2015 (*L.N. No 34 of 2015*) contrary to Section 13(h) of the Statutory Instrument Act (*No. 23 of 2013*).

Section 50(8) of the Public Finance Management Act, 2012 grants power to the Cabinet Secretary, National Treasury to establish by way of regulations approved by Parliament, such sinking fund or funds for the redemption of loans raised under the Act by the national government. The Cabinet Secretary therefore ought to have made Regulations in respect to sinking funds which were to be approved by the National Assembly by way of affirmative resolution. The publication of the Guidelines are therefore a contravention of Section 13(a) of the Statutory Instruments Act (*No. 23 of 2013*).

Consultation / Public participation,

Articles 10 and 118 of the Constitution requires a mandatory conduct of Public Participation by all regulation making Authorities before publication of a statutory instrument. The Explanatory Memorandum submitted by the National Treasury alongside the Guidelines does not comprehensively demonstrate any detail of consultations with the public, or at all, in respect of the dates and responses as required under the Schedule to the Statutory Instrument Act, hence it was not possible to analyse the extent of public participation or level of consultation conducted as required under section 5 of the Statutory Instrument Act and the spirit and letter of Articles 10 and Article 118 of the Constitution. Therefore, there was no submission as to public consultation endeavored by the National Treasury & Planning regarding the establishment of the Sinking Fund.

Having examined the Public Finance Management (Sinking Fund) Guidelines, 2021 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act, 2012 (*No. 18 of 2012*), the Statutory Instruments Act 2013 (*No. 23 of 2013*) pursuant to which they are made, the Committee resolved to recommend to the House to annul the Guidelines in entirety *inter alia* for failing to demonstrate that sufficient public participation was undertaken contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021 (Gazette Notice No. 5085 of 2021).**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

The Hon. Munene Wambugu, M.P.
Kirinyaga Central Constituency
Jubilee Party

The Hon. Patrick Mariru, M.P.
Laikipia West Constituency
Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Mr. Mohamed Jimale
Clerk Assistant II (Team Leader)

Ms. Ruth Mwihaki Gakuya
Clerk Assistant II

Mr. Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Fiona Musili
Research Assitant II

Ms. Noelle Chelangat
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Mr. Muriithi Theuri
Parliamentary Intern

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

2.1.1 Introduction

5. The Cabinet Secretary for the National Treasury and Planning, in exercise of the powers conferred by Section 50 (8) of the Public Finance Management Act, 2012 and Regulation 206 (3) of the Public Finance Management Regulations, 2015, published the **Public Finance Management (Sinking Fund) Guidelines, 2021** on 25th May, 2021 *vide* Gazette Notice Number 5085 of 2021 (Special Issue VOL. CXXIII).
6. The Guidelines were submitted to the Clerk of the National Assembly on 3rd June, 2021, tabled in the House on 8th June, 2021 and subsequently committed to the Committee on Delegated Legislation for scrutiny. The regulation making authority therefore met the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
7. The Committee engaged the National Treasury during a consultative meeting held on Wednesday, 1st September, 2021, in Mombasa where the regulations - making authority made submissions on the guidelines.

2.1.2 Purpose of the Guidelines

8. According to the National Treasury, the Guidelines propose to operationalize the Sinking Fund established under Regulation 206 (1) of the Public Finance Management (National Government) Regulations, 2015, the object and purpose of which, is to provide for funding for the redemption of Government loans and payment of expenses of, or incidental to, redemption of an issue of national government loans in order to enhance the operational autonomy of the Public Debt Management Office.
9. As stipulated under the Guidelines, the Fund is meant to: -
 - a) cushion for amortization of liabilities arising from national government loans;
 - b) facilitate debt restructuring and smoothening of the maturity profile;
 - c) redeem maturing government loans to alleviate rollover risks;
 - d) build up resources for meeting maturities of loans and securities issued in the domestic and international debt capital markets;
 - e) correct any perceived mispricing along the yield curve.
 - f) buy back of a National Government loan obligation in the debt market;
 - g) meet the cost of switches and early redemption of national government loan obligations; and
 - h) meet costs incidental to the loans.

During the scrutiny the committee took note that the guidelines in particular, and, in summary provide for -

- (a) the definitions, objects and purpose of the fund.
- (b) the capitalization of the Fund which shall be appropriated by Parliament from time to time;
- (c) sources of the funds; and

(d) the governance structure of the Fund, which is comprised of the Advisory Committee, Fund Administrator and the Secretariat of the Fund (Appointed by the Cabinet Secretary Finance)

10. The proposed Sinking Fund, in the opinion of the National Treasury will thus assist the government to achieve the desired policy reforms on the administration of public debt management and will be a liability management tool to help cushion government in servicing debts.

2.1.3 Policy Context

11. The National Treasury, during their presentation to the Committee indicated that the Country has been accumulating public debt while providing minimal avenue for redemption of expensive debts over time. They were emphatic that this may lead to costly debt service levels, minimal fiscal space to finance recurrent and development expenditure which impacts on the implementation of government programs and capacity to service government debts.
12. That the Government had initiated reforms around the management and restructuring of national government domestic and external loans with the aim of easing the payment of expensive loans in exchange for less expensive loans. Further, that with the Fund, the Public Debt Management office shall be able to actively be involved in debt management operations. This will include redemption of both domestic and external loans, payment of expenses of, or incidental to loans. Specifically, preference shall be given to concessional loans from both bilateral and multilateral sources.
13. The National Treasury further indicated to the Committee that the intended policy reforms will facilitate the restructuring and retiring of specific targeted loans for purposes of reducing cost of public debt. It was their contention that the savings accruing from this strategic reform intervention will yield savings of between four (4) and (5) percent of interest costs which is a significant saving for a lower middle income country.
14. Further that, where the debt market experiences excess liquidity, the government intends to leverage on these reforms to tap cheap monies and deposit into the Sinking Fund. These resources may be used to retire expensive targeted loans and create additional fiscal space to support priority development expenditures.
15. The National Treasury invoked Article 214 (1) which provides that the public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds; while clause (2) provides that for the purposes of this Article, “the public debt” means all financial obligations attendant to loans raised or guaranteed by the national government.
16. It was indicated that while section 50 (8) of the Public Finance Management Act, 2012 provides for the establishment of a Sinking Fund for the redemption of loans raised under the Act by the national government, the loans defined in the Public Finance Management Act, 2012 include both internal and external loans. Consequently, there is need for the repeal of the General Loans and Stock Act (Cap 419), which provided for redemption of external debts from the United Kingdom.

17. Regulation 206 of the Public Finance Management (National Government) Regulations, 2015 established the Sinking Fund and delegated the power to prepare and publish the guidelines for the operationalization of this fund. The Sinking fund envisaged under the Public Finance Management Act, 2012 is for redemption of both domestic and external loans including the payment of expenses of, or incidental to, loans and shall be used for that purpose.
18. The National Treasury reiterated that the debt stock has been growing over time, in nominal terms due to fiscal deficit incurred to support expenditure on development projects to spur economic growth. As at end of September 2020, the debt was at Kshs. 7,120 billion. Due to the growth in debt, the government has been spending a substantial amount of resources to service the existing debts. Debt service is expected to rise over time as a percentage of revenue and therefore this reform is intended to address this challenge.
19. It was therefore presented to the Committee that the Sinking Fund will therefore be key in the following ways:
 - i. With a sinking fund, the debt shall carry a lower risk of debt repayment consequently reducing the cost of debt.
 - ii. The Fund will help create flexibility in managing existing debt instruments and upcoming maturities.
 - iii. The Fund may be used to retire debt early or at maturity as a portion or in full, thereby saving the government interest expenses and creating fiscal space.
 - iv. The Fund will facilitate the government to meet its debt obligations as they fall due leading to better credit rating and lower interest rates.
 - v. The Fund will be useful in easing the financial burden through fiscal stabilization thereby creating an opportunity to implement future development agenda.
 - vi. The Fund will make national government loans/debts a safer investment and make it attractive to risk averse investors
 - vii. The Sinking Fund will earn income through investment of resources in the Fund.

2.1.4 Scrutiny of the Instrument

20. Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority on Wednesday 1st September, 2021 in Mombasa where Hon. Nelson Gaichuhie, Chief Administrative Secretary, the National Treasury, made a presentation to the Committee on the Instrument.
21. The Committee considered the guidelines against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012, the Statutory Instruments Act, 2013 and the Public Finance Management (National Government) Regulations, 2015.

2.1.5 Summary of the Guidelines

22. **Guideline 3:** outlines the Objects and Purposes of the Fund which is to provide funding for the redemption of Government loans, and payment of expenses of, or incidental to, redemption of an issue of national government loans.

- 23. Guidelines 4 – 6:** provide for Capital of the Fund which shall be appropriated by Parliament from time to time, The Source of the Fund and The Expenditures of the Fund whereby the source shall consist of:
- i. Consolidated Fund Budget Vote for redemption of debts;
 - ii. Monies appropriated by Parliament for the purposes of the Fund;
 - iii. Fees and commissions earned by the Public Debt Management Office;
 - iv. Income invested from the balances of the Fund;
 - v. Foreign exchange gains from external loans to the National Government;
 - vi. Any moneys accruing to or received by the Fund from any other lawful source and any other source to the Fund provided for by an Act of Parliament; and
 - vii. The Expenditures of the Fund will be on payments out of the Sinking Fund in accordance with the Objects and Purpose of the Fund.
- 24. Guidelines 7 – 8:** provide for the establishment of the Committee with 4 members of the Advisory Committee and Functions of the Advisory Committee. The Committee shall consist of the Principal Secretary in charge as the Chairperson, the Director General, Public Debt Management Office as the Secretary, the Director General Accounting Services and Quality Assurance and the Director General Public Investment and Portfolio Management.
- 25. Guidelines 9 – 11:** provide for the Fund Administrator, The Functions of the Fund Administrator and Secretariat to the Fund with the functions of the Fund Administrator shall include: -
- (i) Undertaking day-to-day operations of the Fund;
 - (ii) Supervising and controlling the Administration of the Fund;
 - (iii) Preparing the Fund's work plan;
 - (iv) Borrowing and depositing monies into the Fund for the purposes of debt redemption on approval by the Cabinet Secretary;
 - (v) Formulating policies to achieve the objects and purpose of the Fund and submit to the Committee for consideration and recommendation for approval by the Cabinet Secretary;
 - (vi) Preparing estimates of the revenue and expenditure of the Fund for each financial year and submitting to the Committee for consideration and approval by the Cabinet Secretary;
 - (vii) Preparing quarterly management reports for review and recommendation by the Committee to the Cabinet Secretary for further necessary actions;
 - (viii) Opening any bank account of the Fund in accordance with section 28 of the Act with approval of the Cabinet Secretary; and
 - (ix) Preparing statutory reports in accordance with provisions of the Act and performing such other duties as may be considered necessary by the Cabinet Secretary from time to time.
- 26. Guideline 17:** provides for Winding up of the Fund which if it occurs, the Administrator of the Fund shall pay any credit balance in the Fund into the National Exchequer Account to the credit of the National Government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance.

3.0 COMMITTEE FINDINGS

27. Following comprehensive scrutiny of the Guidelines, the Committee made the following findings:–

- 1) **THAT, the Public Finance Management (Sinking Fund) Guidelines, 2021** were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act; 2013. The Guidelines were published in the gazette on 25th May, 2021 *vide* Gazette Notice Number 5085 of 2021 (*Special Issue VOL. CXXIII*) and submitted to the Clerk of the National Assembly on 3rd June, 2021, tabled in the House on 8th June, 2021 and subsequently committed to the Committee on Delegated Legislation for scrutiny.
- 2) **THAT, the Guidelines as published contravene section 13(h) of the Statutory Instruments Act (No. 23 of 2013).** The enabling provision invoked the wrong reference as it was made under the Public Finance Management (National Government) Regulations, 2015.
- 3) **THAT, Section 50(8) of the Public Finance Management Act, 2012 grants power to the Cabinet Secretary, National Treasury to establish by way of regulations approved by Parliament, such sinking fund or funds for the redemption of loans raised under the Act by the national government.** The Cabinet Secretary therefore ought to have made Regulations in respect to sinking funds which were to be approved by the National Assembly by way of affirmative resolution. The publication of the Guidelines are therefore a contravention of Section 13(a) of the Statutory Instruments Act (*No. 23 of 2013*).
- 4) **THAT, the Explanatory Memorandum submitted alongside the Regulations does not, comprehensively demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act,** hence it was not possible to analyse the extent of public participation or level of consultation conducted required under section 5 of the Statutory Instrument Act and the spirit and letter of Article 10 and Article 118 of the Constitution.
- 5) **THAT, the Sinking Fund Guidelines require a regulatory impact assessment and submission to the National Assembly of a regulatory impact statement within the meaning of section 8 of the Statutory Instrument Act, 2013** as the Fund is appropriated from the consolidated Fund and as such accrue from the taxpayers and would thus impose significant costs to the community or part of the community.

4.0 COMMITTEE RECOMMENDATION

28. Having examined the **Public Finance Management (Sinking Fund) Guidelines, 2021** against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012, the Statutory Instruments Act 2013, and the Public Finance Management (National Government) Regulations, 2015, **the Committee recommends that the House annuls in entirety the said statutory instrument for failing to demonstrate that sufficient public participation was undertaken contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act and failure to submit a regulatory impact statement as required under the Statutory Instruments Act.**

Signed.....

Date.....21/5/2021.....

THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)

ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number 5085 of 2021 (Special Issue VOL. CXXIII) and the Explanatory Memorandum**
- 3. Committee Minutes**

MINUTES OF THE 49TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY 1ST SEPTEMBER, 2021 AT 10.00 A.M. IN MAKUTANO MEETING ROOM, SAROVA WHITESANDS BEACH RESORT, MOMBASA.

PRESENT

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. **The Hon. Muriuki Njagagua, M.P.** - **Vice Chairperson**
3. The Hon. Robert Mbui, M.P.
4. The Hon. Daniel Maanzo, M.P.
5. The Hon. (Dr.) Wilberforce Oundo, M.P.
6. The Hon. Ronald Tonui, M.P.
7. The Hon. George Murugara, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Edith Nyenze, M.P.
10. The Hon. Gideon Mulyungi, M.P.
11. The Hon. Abdi Tepo, M.P.
12. The Hon. Robert Gichimu, M.P.
13. The Hon. Kamoti Mwamkale, M.P.
14. The Hon. Nicholas Tindi Mwale, M.P.

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, MGH, M.P.
2. The Hon. Patrick Mariru, M.P.
3. The Hon. Waihenya Ndirangu, M.P.
4. The Hon. Alice Wahome, M.P.
5. The Hon. Timothy Wanyonyi, M.P.
6. The Hon. Sammy Seroney, M.P.
7. The Hon. Munene Wambugu, M.P.
8. The Hon. Jennifer Shamalla, M.P.
9. The Hon. William Cheptumo, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Mrs. Florence Abonyo - Director, Audit Appropriations and Other Select Committee's
2. Mr. Mohamed Jimale - Clerk Assistant II
3. Ms. Ruth M. Gakuya - Clerk Assistant II
4. Mr. Wilson Dima Dima - Principal Legal Counsel
5. Mr. Josephat Motonu - Fiscal Analyst
6. Ms. Noelle Chelangat - Media Relations Officer

7. Mr. Charles Ayari - Superintendent of Electronics (Audio)
8. Mr. Anthony Wamae - Serjeant-at-Arms
9. Mr. Muriithi Theuri - Intern

The National Treasury and Planning

1. Hon. Nelson Gaichuhie - Chief Administrative Secretary,
2. Mr. Christopher kirigia - Director General Public Private Partnership
3. Mr. Okusinga Humphrey - Director Debt management.
4. MR. Gideon O. Magera - Legal Officer, Public Private Partnership
5. Dr. Oluoch Wafula - Assistant Director, Public Private Partnership
6. Mr. Livingstone Bumbe - Deputy Director
7. Dr. Ronoh - Head Legal/PPP
8. Ms. CPA Isabella Kogei - Asst. Director, Budget/Parliamentary Liaison Officer
9. Mr. Robert Osudi - Principle Economists
10. Ms. Naela Wanjala - legal Officer, PPP Directorate

MIN.NO./NA/CDL/2021/213

PRAYER AND PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. with a word of Prayer. The Chairperson welcomed the delegation from the National Treasury led by Hon. Nelson Gaichuhie, Chief Administrative Secretary to the meeting. A round of self-introductions was then conducted before proceeding with the business of the day.

MIN.NO./NA/CDL/2021/214

CONSIDERATIONS OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

The Chief Administrative Secretary National Treasury informed the committee that the Public Finance Management (Sinking Fund) Guidelines 2021 were developed pursuant to regulations 206 (3) of Public Finance Management (National Government) Regulations 2015 and are purposed to manage the Sinking Fund established under regulation 206 (1) of the same regulations.

Members were informed that the Sinking Fund regulations were to provide for the redemption of government loans; further the fund is meant to:

- a. Cushion for amortization of liabilities arising from national government loans.
- b. Facilitate debt restructuring and smoothening of the maturity profile.
- c. Redeem maturing government loans to alleviate rollover risks.
- d. Build up resources for meeting maturities of loans and securities issued in the domestic and international debt capital markets.
- e. Correct any perceived mispricing along the yield curve.
- f. Buy back of a National Government loan obligations in the debt market.
- g. Meet the cost of switches and early redemption of national government loan obligations.
- h. Meet cost incidental to the loans.

The guidelines provides for;

- a. The definitions, objects and purpose of the fund.
- b. The capitalization of the Fund which shall be appropriated by Parliament from time to time
- c. Sources of the funds.
- d. The governance structure of the Fund, which is comprised of the Advisory Committee, Fund Administrator and the Secretariat of the Fund (Appointed by the Cabinet secretary Finance).

Further that The Fund Administrator will be the Head of the Public Debt Management Office in accordance to regulation 206(1) of the Public Finance Management (National Government) regulations 2015 who would undertake the day to day operations of the Fund among other duties stated.

Plenary Discussions

The Committee made the following observations:-

- 1) **THAT, the Public Finance Management (Sinking Fund) Guidelines, 2021** were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act; 2013. The Guidelines were published in the gazette on 25th May, 2021 *vide* Gazette Notice Number 5085 of 2021 (*Special Issue VOL. CXXIII*) and submitted to the Clerk of the National Assembly on 3rd June, 2021, tabled in the House on 8th June, 2021 and subsequently committed to the Committee on Delegated Legislation for scrutiny.
- 2) **THAT,** the Guidelines as published contravene section 13(h) of the Statutory Instruments Act (*No. 23 of 2013*). The enabling provision invoked the wrong reference as it was made under the Public Finance Management (National Government) Regulations, 2015.
- 3) **THAT,** Section 50(8) of the Public Finance Management Act, 2012 grants power to the Cabinet Secretary, National Treasury to establish by way of regulations approved by Parliament, such sinking fund or funds for the redemption of loans raised under the Act by the national government. The Cabinet Secretary therefore ought to have made Regulations in respect to sinking funds which were to be approved by the National Assembly by way of affirmative resolution. The publication of the Guidelines are therefore a contravention of Section 13(a) of the Statutory Instruments Act (*No. 23 of 2013*).
- 4) **THAT,** Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. There is no submission as to public consultation endeavored by the National Treasury & Planning regarding the establishment of the Sinking Fund.
- 5) **THAT, the Explanatory Memorandum submitted alongside the Regulations does not, comprehensively demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act,** hence it was not possible to analyse the extent of public participation or level of

consultation conducted required under section 5 of the Statutory Instrument Act and the spirit and letter of Article 10 and Article 118 of the Constitution.

- 6) **THAT, the Sinking Fund Guidelines require a regulatory impact assessment and submission to the National Assembly of a regulatory impact statement within the meaning of section 8 of the Statutory Instrument Act, 2013** as the Fund is appropriated from the consolidated Fund and as such accrue from the taxpayers and would thus impose significant costs to the community or part of the community.

Committee Resolution

Having examined the Public Finance Management (Sinking Fund) Guidelines, 2021 against the Constitution of Kenya, the interpretation and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012 (*No. 18 of 2012*) the Statutory Instrument Act, (*No. 23 of 2013*) and the Public Finance Management (National Government) Regulations, 2015, pursuant to which they are made, the Committee resolved to **annul** them as proposed by Hon.Muriuki Njagagua, M.P. and seconded by Hon. (Dr.) Wilberforce Oundo, M.P.

MIN.NO. /NA/CDL/2021/215 ADJOURNMENT

There being no other business the meeting was adjourned at 12.10 a.m. to reconvene same day at the same venue.

Signed.....

Date..... 21/9/2021.....

HON. KASSAIT KAMKET, M.P. (CHAIRPERSON)



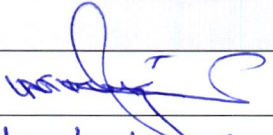
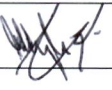
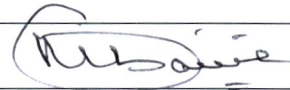
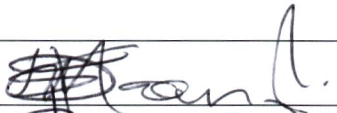
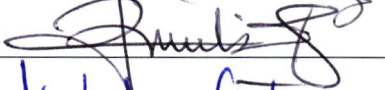
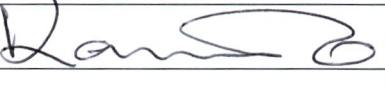


COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021 (Gazette No. 5085 of 2021)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 21/09/2021

| | HON. MEMBER | SIGNATURE |
|-----|--|---|
| 1. | Hon. Kassait Kamket, MP (Chairperson) |  |
| 2. | Hon. Muriuki Njagagua, MP (Vice Chairperson) | Virtual adoption |
| 3. | Hon. Isaac Waihenya Ndirangu, MP |  |
| 4. | Hon. Cecily Mbarire, MP |  |
| 5. | Hon. Alice Wahome, MP | |
| 6. | Hon. Daniel Maanzo, MP |  |
| 7. | Hon. Robert Mbui, MP |  |
| 8. | Hon. Martha Wangari, MP | Virtual adoption |
| 9. | Hon. Ronald Kiprotich Tonui, MP | |
| 10. | Hon. Timothy Wanyonyi, MP | |
| 11. | Hon. William Kamoti, MP |  |
| 12. | Hon. Gideon Mulyungi, MP | |
| 13. | Hon. George Gitonga Murugara, MP |  |
| 14. | Hon. Jennifer Shamalla, MP | |
| 15. | Hon. Munene Wambugu, MP | |
| 16. | Hon. Patrick Kariuki Mariru, MP | Virtual adoption |
| 17. | Hon. (Dr.) Wilberforce Oundo, MP | |
| 18. | Hon. Abdi K. Tepo, MP |  |
| 19. | Hon. Muturi Kigano, MP Hon. Edith Njenzu | |
| 20. | Hon. Robert Githinji Gichimu, MP | |
| 21. | Hon. Sammy Seroney, MP | Virtual adoption |
| 22. | Hon. Tindi Mwale, MP | |
| 23. | Hon. William Cheptumo, M.P | |

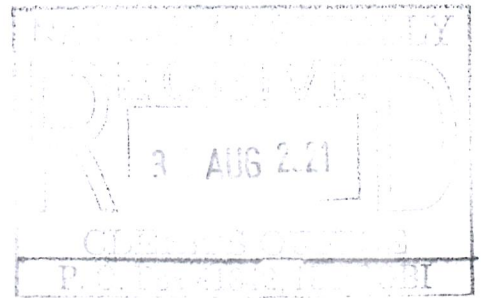
REPUBLIC OF KENYA



THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 315779
NAIROBI
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100



When replying please quote

Ref No. DMD 4/197 'A'

30th August, 2021

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear Sialai,

Handwritten notes:
① DLP 31/8/21
② Draft letter to the attention of the committee on Delegated Legislation
31/8/21

Draft Public Finance Management (Sinking Fund) Guidelines, 2021

The National Treasury has developed the Draft Public Finance Management (Sinking Fund) Guidelines, 2021, in line with requirements of Section 50(8) of the Public Finance Management Act, 2012 and Regulation 206 (3) of the PFM Regulations, 2015.

The National Assembly Committee on Delegated Legislation has scheduled a meeting in Mombasa on 1st September 2021(9.45am) to consider and deliberate on the Draft Public Finance Management (Sinking Fund) Guidelines, 2021.

The purpose of this letter therefore is to submit to you prior to the meeting:

- i. The Cabinet Secretary National Treasury and Planning's talking notes on the Public Finance Management (Sinking Fund) Guidelines, 2021;
- ii. Public Finance Management (Sinking Fund) Guidelines, 2021;
- iii. Explanatory Memorandum with extracts of the enabling statutes, and
- iv. A summary of comments received from public participation pursuant to Section 5 of the Statutory Instruments Act No. 23 of 2013).

Yours

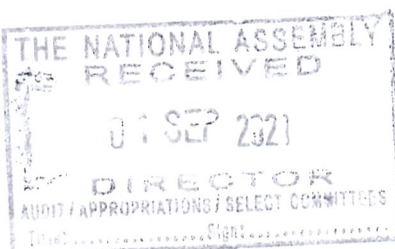
Signature of Ukur K. Yatani

Signature of Ukur K. Yatani

HON. (AMB.) UKUR K. YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Handwritten note:
② Hand take the register to register

Att.



Handwritten note:
④ SIMANE
Please deal for 01/9/21

REMARKS BY THE CABINET SECRETARY, NATIONAL TREASURY DURING THE MEETING WITH THE COMMITTEE ON DELEGATED LEGISLATION OF THE NATIONAL ASSEMBLY ON THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES 2021

Hon. Chair and Hon. Members of the Committee on Delegated Legislation, the Public Finance Management (Sinking Fund) Guidelines are developed pursuant to Regulation 206(3) of Public Finance Management (National Government) Regulations 2015 and are intended to be applied to the management of the Sinking Fund established under Regulation 206(1) of the same regulations.

Hon. Chair, The Object and Purpose of the Fund is to provide funding for the redemption of government loans, and payment of expenses of, or incidental to, redemption of an issue of national government loans.

The Fund is meant to:

- i. cushion for amortization of liabilities arising from national government loans;
- ii. facilitate debt restructuring and smoothening of the maturity profile;
- iii. redeem maturing national government loans to alleviate rollover risks;
- iv. build up resources for meeting maturities of loans and securities issued in the domestic and international debt capital markets;
- v. correct any perceived mispricing along the yield curve;
- vi. buy back of a national government loan obligations in the debt market;
- vii. meet the cost of switches and early redemption of national government loan obligations; and
- viii. meet costs incidental to the loans.

The Capitalization of the Fund shall be as appropriated by Parliament from time to time from the following:

- i. Consolidated Fund Budget Vote for redemption of debts;
- ii. Monies appropriated by Parliament;
- iii. Fees and commissions earned by the Public Debt Management Office;
- iv. Incomes invested from the balances of the Fund;
- v. Foreign exchange gains from external loans to the National Government;
- vi. Any moneys accruing to or received by the Fund from any lawful source; and
- vii. Any other source to the Fund provided for by an Act of Parliament.

Hon. Chair, there is to be established a Committee known as The Sinking Fund Advisory Committee which shall consist of:

- i. The Principal Secretary in charge of Finance as the Chairperson;
- ii. The Director General, Public Debt Management Office as the Secretary;
- iii. The Director General, Accounting Services and Quality Assurance; and
- iv. The Director General, Public Investment and Portfolio Management.

The functions of the Advisory Committee shall be to:

- i. provide advice on the administration of the Fund;
- ii. provide policy linkage between the Fund and other public finance management functions;
- iii. review and recommend for approval of statutory and management reports;
- iv. review and recommend the annual work plans, annual securities issuance plan, and investment plans to the Cabinet Secretary for approval and
- v. review and recommend for approval the revenue and expenditure estimates.

Hon. Chair, the Advisory Committee shall be holding its meetings as follows:

- i. In absence of the Chairperson in any meeting of the Committee any member appointed in writing by the Principal Secretary in charge of Finance shall chair the meeting
- ii. The Secretary to the Committee may delegate the functions of the secretary to the Director Debt Recording and Settlement from time to time
- iii. The Committee may from time to time, co-opt other members as it may deem necessary for the proper and efficient discharge of its functions
- iv. The Committee shall meet not less than four times in every financial year
- v. The quorum for the conduct of the meeting of the Committee shall be three members
- vi. The Committee shall regulate its own procedures.

Hon. Chair, the Fund Administrator shall be, the Head of the Public Debt Management Office in accordance to Regulation 206(1) of the Public Finance Management (National Government) Regulations 2015.

The Administrator of the Fund shall perform the following duties:

- i. undertake day to day operations of the Fund;
- ii. supervise and control the administration and management of the Fund;
- iii. prepare the Fund's work plan including, annual securities issuance and redemption plan and investment schedule and submits to the Committee for consideration and recommendation by the Cabinet Secretary;
- iv. borrow and deposit monies into the Fund for the purpose of debt redemption;
- v. formulate policies to achieve the objective and purpose of the Fund and submit to the Committee for consideration;
- vi. prepare the estimates of revenue and expenditure of the Fund for each financial year and submit to the Committee for consideration and recommendation;
- vii. prepare quarterly management reports for review and recommendation;
- viii. open any bank account of the Fund in accordance with Section 28 of the PFM Act 2012 with approval of the Cabinet Secretary;
- ix. prepare quarterly management reports in accordance with the provisions of the PFM Act 2012; and
- x. perform such other duties as may be considered necessary by the Cabinet Secretary from time to time for the proper administration and management of the Fund.

Hon. Chair, the Secretariat to the Fund shall be appointed by the Cabinet Secretary in charge of Finance and shall ensure that the Fund has the resources and skills to manage the day-to-day operations of the Fund.

Hon. Chair, the financial year of the Fund shall run from the 1st July to the 30th June.

Monies received in the sinking Fund may be invested in government securities in accordance with the approved cash flow plan.

The Fund shall be audited in accordance with the provisions of the Constitution of Kenya, the PFM Act 2012 and the Public Audit Act 2015.

Hon. Chair, the Reporting Framework shall be as follows:

- i. The Administrator of the Fund shall prepare the annual financial and non-financial reports in accordance with the PFM Act 2012 and the Public Audit Act 2015 and submitted to the Accounting Officer for approval before submission to the Auditor-General for Auditing.
- ii. The Annual financial and non-financial statements shall be submitted to the Auditor-General for Audit within three months after the end of the financial year in accordance with the Public Audit Act 2015.
- iii. The Administrator of the Fund shall prepare an annual general performance report of the Fund.

Hon. Chair, in the event of winding up the Fund:

- i. The Administrator of the Fund shall pay any credit balance in the Fund into the National Exchequer Account to the credit of the National Government while other assets of the Fund shall be transferred to the Ministry responsible for finance.
- ii. The Cabinet Secretary shall pay any deficit in the Fund from the Funds of the National Government in the National Exchequer account upon approval of Parliament.
- iii. The Committee shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund.
- iv. The Cabinet Secretary shall submit a final statement of accounts of the Fund to Parliament.

Finally, Hon. Chair, in light of the above deliberations on the Public Finance Management (Sinking Fund) Guidelines 2021, The National Treasury hereby wishes to request you to adopt the regulations for further application in Public Debt Management and specifically on debt servicing in Kenya.



HON.(AMB.) UKUR K. YATANI
CABINET SECRETARY,
NATIONAL TREASURY AND PLANNING
1st September, 2021

SPECIAL ISSUE



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NAIROBI, 25th May, 2021

Price Sh. 60

GAZETTE NOTICE NO. 5085

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015

(LN. No. 34/2015)

THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

STATEMENT OF INTENT

The Public Finance Management (Sinking Fund) Guidelines are made by the Cabinet Secretary pursuant to regulation 206(3) of the Public Finance Management (National Government) Regulations, 2015 and are intended to be applied to the management of the Sinking Fund established under regulation 206(1) of the Regulations.

Citation

1. These Guidelines may be cited as the Public Finance Management (Sinking Fund) Guidelines, 2021.

2. In these Guidelines, unless the context otherwise requires—

“Act” means the Public Finance Management Act, 2012;

“Administrator of the Fund” means the Head of the Public Debt Management Office as assigned under regulation 206 (1);

“Committee” means the Sinking Fund Advisory Committee established under paragraph 7 of these Guidelines;

“Cabinet Secretary” has the meaning assigned under section 2 of the Act;

“Fund” means the Sinking Fund established under regulation 206(1) of the Regulations;

“loan” has the meaning assigned to it under Article 260 of the Constitution; and

“Regulations” means the Public Finance Management (National Government) Regulations, 2015.

Objects and Purposes of the Fund

3. (1) The objects and purpose of the Fund is to provide funding for the redemption of Government loans, and payment of expenses of, or incidental to, redemption of an issue of national government loans.

(2) Notwithstanding the generality of sub-paragraph (1), the Fund shall be used to—

- (a) cushion for amortization of liabilities arising from national government loans;
- (b) facilitate debt restructuring and smoothening of maturity profile;
- (c) redeem maturing national government loans to alleviate rollover risks;
- (d) build up resources for meeting maturities of loans and securities issued in the domestic and international debt capital markets;
- (e) correct any perceived mispricing along the yield curve;
- (f) buy back of a national government loan obligations in the debt market;
- (g) meet the cost of switches and early redemption of national government loan obligations; and
- (h) meet costs incidental to the loans.

Capital of the Fund

4. The capital of the Fund shall be as appropriated by Parliament from time to time.

Source of the Fund

5. The source of the Fund shall consist of—

- (a) Consolidated Fund Budget Vote for redemption of debts and other debt related expenses from the Exchequer and shall be remitted to the Fund continuously;
- (b) monies appropriated by Parliament for the purposes of the Fund;
- (c) fees and commissions earned by the Public Debt Management Office in execution of its mandate;
- (d) income invested from the balances of the Fund;

- (e) foreign exchange gains from external loans to the National Government;
- (f) any moneys accruing to or received by the Fund from any other lawful source, with the approval of the Cabinet Secretary; and
- (g) any other source to the Fund provided for by an Act of Parliament

Expenditures of the Fund

6. (1) Payments out of the Sinking Fund shall be for the purposes specified in paragraph 3 of these Guidelines.

(2) The expenditure incurred on the Fund shall be on the basis of the annual work plans and cost estimates which shall be prepared by the Administrator of the Fund, recommended by the Committee and approved by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work plans and of any cost estimate shall be recommended by the Committee and approved by the Cabinet Secretary.

Establishment of the Committee

7. There is to be established a committee known as Sinking Fund Advisory Committee.

(2) The Committee shall consist of—

- (a) the Principal Secretary in charge of finance as the Chairperson;
- (b) the Director-General, Public Debt Management Office as the Secretary;
- (c) the Director-General, Accounting Services and Quality Assurance; and
- (d) the Director-General Public Investment and Portfolio Management.

Functions of the Advisory Committee

8. The functions of the Committee shall be to—

- (a) provide advice on the administration of the Fund;
- (b) provide policy linkages between the Fund and other public finance management functions including the linkage into the National Government's budget estimates;
- (c) review and recommend for approval of statutory and management reports of the Fund before submission to the Cabinet Secretary for approval and onward transmission to the Auditor-General with a copy to the Controller of Budget;
- (d) review and recommend the annual work plans, annual securities issuance plan, and investment plans to the Cabinet Secretary for approval; and
- (e) review and recommend for approval the revenue and expenditure estimates of the Fund to the Cabinet Secretary in each financial year.

Fund Administrator

9. The head of Public Debt Management Office shall be the Administrator of the Fund in accordance to regulation 206 (1).

10. The functions of the Administrator of the Fund shall be to—

- (a) undertake day-to-day operations of the Fund;
- (b) supervise and control the administration and management of the Fund;
- (c) prepare the Fund's work plan including, annual securities issuance and redemption plan and investment schedule and submits to the Committee for consideration and recommendation by the Cabinet Secretary;
- (d) borrow and deposit monies into the Fund for the purposes of debt redemption on approval by the Cabinet Secretary;
- (e) formulate policies to achieve the objects and purpose of the Fund and submit to the Committee for consideration and recommendation for approval by the Cabinet Secretary;

(f) prepare the estimates of revenue and expenditure of the Fund for each financial year and submit to the Committee for consideration and recommendation for approval by the Cabinet Secretary;

(g) prepare quarterly management reports for review and recommendation by the Committee to the Cabinet Secretary for further necessary actions;

(h) open any bank account of the Fund in accordance with section 28 of the Act with approval of the Cabinet Secretary;

(i) prepare statutory reports in accordance with the provisions of the Act, submit them to the Committee for review and recommendation to the Cabinet Secretary for approval before transmission to the Auditor General with a copy to the National Treasury, Controller of Budget and Commission on Revenue Allocation; and

(j) perform such other duties as may be considered necessary by the Cabinet Secretary from time to time for the proper administration and management of the Fund and such a duty shall be assigned in writing.

Secretariat to the Fund

11. The Cabinet Secretary shall appoint the secretariat to the Fund and ensure that the Fund has the resources and skills to manage the day-to-day operations of the Fund.

Meetings

12. (1) In the absence of the Chairperson in any meeting of the Committee, any member appointed in writing by the Principal Secretary in charge of finance shall chair the meeting.

(2) The Secretary to the Committee may delegate the functions of the Secretary to the Director Debt Recording and Settlement from time to time.

(3) The Committee may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its functions.

(4) The Committee shall meet not less than four times in every financial year and not more than three months shall elapse between the date of one meeting and the next.

(5) The quorum for the conduct of meetings of the Committee shall be three members.

(6) The Committee shall regulate its own procedure.

Financial Year

13. The financial year of the Fund shall run from the 1st July to the 30th June.

Investment

14. Monies received in the Sinking Fund, may be invested in Government securities in accordance with the approved cash flow plan.

Audit of the Fund

15. The Fund shall be audited in accordance with the provisions of Constitution, the Act and the Public Audit Act, 2015.

Reporting Framework

16. (1) The Administrator of the Fund shall prepare the annual financial and non-financial reports in accordance with the Act and the Public Audit Act, 2015 and submitted to the Accounting Officer for approval before submission to the Auditor-General for audit.

(2) The annual financial and non-financial statements shall be submitted to the Auditor-General for audit within three months after the end of the financial year in accordance with the Public Audit Act, 2015 and as may be prescribed by the Public Sector Accounting Standards Board and a copy submitted to the Controller of Budget.

(3) In addition, the Administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under subparagraph (1).

17. In the event of winding-up of the Fund—

- (a) the Administrator of the Fund shall pay any credit balance in the Fund into the National Exchequer Account to the credit of the National Government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance;
- (b) the Cabinet Secretary shall pay any deficit in the Fund from the Funds of the National Government in the National Exchequer Account upon approval of Parliament;
- (c) the Committee shall prepare the final winding up report not later than six months from the date of the decision to wind up

the Fund and submit the financial and non-financial reports to the Auditor-General for audit with a copy to the Cabinet Secretary; and

- (d) the Cabinet Secretary shall submit a final statement of accounts of the Fund to Parliament.

Dated the 11th May, 2021.

UKUR YATANI,
Cabinet Secretary, The National Treasury

GAZETTE NOTICE NO. 5086

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

SELECTION PANEL FOR THE APPOINTMENT OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (2021)

NAMES AND QUALIFICATIONS OF ALL APPLICANTS FOR THE POSITION OF MEMBER OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION VACANCY NO. SP/IEBC/2021

WHEREAS Articles 88 and 250 of the Constitution of Kenya, 2010, sections 5 and 6 of the Independent Electoral and Boundaries Commission Act, 2011, and the First Schedule thereto, as amended by the Independent Electoral and Boundaries Commission (Amendment) Act, 2020, provide for the membership of the Independent Electoral and Boundaries Commission and the process of appointment of Commissioners of the Independent Electoral and Boundaries Commission;

And whereas by Gazette Notice No. 3522 of 14th April, 2021, His Excellency the President declared four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission;

And further whereas on 1st May, 2021, the Selection Panel for the Appointment of Commissioners of the Independent Electoral and Boundaries Commission (2021) invited applications from suitably qualified persons who satisfy the provisions of the Constitution and the Independent Electoral and Boundaries Commission Act, 2011, by advertisement in the *Kenya Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission;

Now therefore pursuant to paragraph 3(1) of the First Schedule to the Independent Electoral and Boundaries Commission Act 2011, the Selection Panel for the Appointment of Commissioners of the Independent Electoral and Boundaries Commission (2021) hereby publishes the names of all persons who applied for the four (4) vacancies in the position of Member of the Independent Electoral and Boundaries Commission and their qualifications, by the deadline of Monday, 17th May, 2021 at 5.00 p.m. (East African Time)

APPLICATIONS FOR MEMBER OF THE IEBC (Ref. SP/IEBC/2021)

| Name | Gender | ID/PP No. | County | Qualifications |
|-----------------------------|--------|-----------|--------------|--|
| Abdalla Mohamed | M | 16009517 | Nairobi City | Master of Education and Leadership Management, KEMU BBA (Human Resource Management), KEMU (2007) Diploma in Education, KU |
| Abdallah Kassim | M | B158202 | Kisumu | MA (Communication Studies), UoN BSc (Mass Communication), Islamic University, Uganda |
| Abdirizak Arale Nunow (Dr.) | M | 7226752 | Garissa | PhD (Environmental Science), University of Amsterdam, Netherlands Masters (Philosophy in Environmental Studies) (Environmental Planning and Management), Moi University Bachelor of Arts, KU |
| Abdulaziz Ali Khamis | M | 2271162 | Mombasa | MBA, UoN BSc, (Business Administration), USIU |
| Abdulghani Sheikh Hassan | M | 24737241 | Garissa | Master of Education (Leadership and Management), MKU BEd, Islamic University in Uganda |
| Abert Lotuk Adome | M | 4801512 | Turkana | Masters of Philosophy in Educational Communication and Technology, Moi University Postgraduate Diploma (HRM), Moi University Bachelor of Education Diploma in Education, Kisii Teachers |
| Abigael Mbagaya Mukolwe | F | 7129443 | Kakamega | Master of Urban Management, UoN BA (Land Economics), UoN |
| Abishag Wanjeru Ngoci | F | 22516792 | Embu | Bachelor of Education (Science), Egerton University |
| Abraham Wawire | M | 10454234 | Trans Nzoia | MSc (Development Finance), KCA University BCom (Finance), KCA University |
| Adan Wario Kabela | M | 9854124 | Isiolo | MA (Sociology), UoN BEd (Economics and Business Studies), KU |
| Agnes Nafula Kisaka | F | 9238148 | Bungoma | MBA, UoN Post Graduate Diploma (Planning and Management of Development) BCom (Accounting), Catholic University |
| Ahmed Abdi Noor | M | 0192429 | Garissa | BA (Business Administration), Kampala University |

| Name | Gender | I.D/PP No. | County | Qualifications |
|--------------------------------|--------|------------|--------------|--|
| Ahmed Abdikarim Hassan (Dr.) | M | 0038993 | Wajir | Doctor of Philosophy (Business Administration), JKUAT MBA (Strategic Management), Kenya Methodist University BSc (Materials Technology- Leather) University of Northampton, UK |
| Ajode Stephen Odipo | M | 10809848 | Siaya | Post-Graduate Diploma (Education), Maseno University Bachelor of Business Administration with IT (HRM), Maseno University Diploma in Human Resource Management, UoN |
| Albert Lotuk Adome | M | 4801512 | Turkana | MPhil (Educational Communication and Technology), Moi University Postgraduate Diploma (Human Resource Management), Moi University BEd (Arts), Moi University Diploma (Education, Humanities), Kisii Teachers College |
| Alex Kazongo | M | 6830709 | Migori | MBA, USIU BCom (Accounting), UoN |
| Alex Kebaso Ombati | M | 14452232 | Nyamira | Bachelor of Business Management (Finance and Banking), Moi University |
| Alfred Kamau Ndirangu | M | 3249435 | Nakuru | BEd, KEMU |
| Alfred Kiptoo Serem (Dr.) | M | 5999757 | Nandi | PhD (Agricultural Resource Economics and Management), Moi University MBA (Executive), Moi University MSc (Agricultural Economics), UoN BSc (Agriculture), UoN |
| Alfred Sifa Dena | M | 11761098 | Kilifi | MBA (Finance) USIU BSc (Hotel and Restaurant Management), USIU |
| Ali Abdi | M | 12960221 | Kitui | BEd (Arts), The East African University Diploma (Education) (Arts), The East African University |
| Allan Wachira Mwangi | M | 27854099 | Nakuru | MBA, KU BCom (Accounting), UoN |
| Amosi Nyongesa Chilai | M | 20028887 | Kakamega | BEd (Science), Kenyatta University Diploma (Human Resource Management), KIM |
| Amosi Nyongesa Chilai | M | 20028887 | Kakamega | BEd (Science), KU |
| Amukah Kenneth Oborah | M | 23207430 | Nairobi City | Higher Diploma (Business Technical Education Programme), KNEC BEd (Science), KU |
| Andrew Akendo Ogombe | M | 6666204 | Siaya | MA (Executive Business Administration), Moi University BA (Economics), UoN Higher Diploma (HRM), Institute of Human Resources Management |
| Andrew Ayarah Okwach | M | 7957564 | Kisumu | MBA, UoN Bachelor of Arts, UoN Higher Diploma (Human Resources Management), Institute of Personnel Management |
| Andrew Govedi Kisanyanya | M | 13503969 | Vihiga | MBA (Finance), KU BCom (Accounting), Kampala International University |
| Andrew Muthuma Nthuku | M | 13663988 | Meru | Bcom (Business Administration and Management), Daystar University Post Graduate Diploma (Marketing), Chartered Institute of Marketing, UK |
| Angeline Chepkoech | F | - | - | Diploma in Mass Communication, Eldoret Aviation College |
| Ann Mwikali Kiusya | F | 10007342 | Machakos | Bachelor of Laws, UoN Diploma in Law, Kenya School of Law Diploma (Human Resource Management), KIM |
| Ann Wanja Kariuki | F | 4826647 | Kiambu | Master of Public Administration, Cheyney University Master of Laws, Temple University Bachelor of Laws, UoN |
| Anne Akoya Khasakhala, (Dr.) | F | 16121494 | Vihiga | PhD (Population Studies, International Institute for Populations Sciences), Mumbai India MSc. (Medical Demography), University of London BSc in Sociology, Polytechnic of North London Graduate Diploma (Population Studies), University of Ghana Diploma (Social Planning in Developing Countries), London School of Economics and Political Sciences Ordinary National Diploma (Business Studies), The Business Education Council |
| Anne Juliet Githaiga | F | 1092528 | Embu | Masters (Governance and Ethics), Mt. Kenya University Postgraduate Diploma (Education), KU Bachelor of Arts, UoN Diploma in Education Management, Kenya Education Management Institute |
| Anne Kerubo Mwasi | F | 9126100 | Nakuru | MBA (Strategic Management), UoN BCom (Accounting and Auditing), Marathwada University India |
| Anne Mwikali Kiusya | F | 10007342 | Machakos | Bachelors of Laws, UoN Diploma in Law, KSL Diploma in HRM |
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| Anthony Anderson Luvanda (Dr.) | M | 14417990 | Nairobi City | Doctor of Philosophy (IT), JKUAT MSc (Computer Based Information System), Sunderland University, UK BSc (International Business Administration), USIU |
| Anthony Makadam Simiyu | M | 27699106 | Trans Nzoia | BSc (Electrical Engineering), Moi University Diploma (Instrumental and Control Engineering), Eldoret Polytechnic |

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

1. PURPOSE OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021.

- i. These regulations propose to operationalize the sinking fund established under Regulation 206(1) of the Public Finance Management (National Government) Regulations, 2015, whose object and purpose is to provide funding for the redemption of Government loans, and payment of expenses of, or incidental to, redemption of an issue of national government loans. By doing so it will enhance operational autonomy of the Public Debt Management Office
- ii. The country has been accumulating public debt while providing minimal avenue for redemption of expensive debts overtime. This may lead to costly debt service levels, minimal fiscal space to finance recurrent and development expenditure which impacts implementation of Government programs and capacity to service government debts.
- iii. The Government has initiated reforms around the management and restructuring of national government domestic and external loans. The aim of these reforms is to ease the payment of expensive loans in exchange for less expensive loans. With the Fund, the Public Debt Management Office will be able to actively be involved in debt management operations.
- iv. This will include redemption of both domestic and external loans, payment of expenses of, or incidental to loans. Specifically, preference shall be given to concessional loans from both bilateral and multilateral sources.
- v. The intended policy reforms will facilitate the restructuring and retiring of existing targeted loans for purposes of reducing cost of public debt. The savings accruing from this strategic reform intervention will yield savings of between 4 to 5 percent of interest costs which is a significant saving for a lower middle-income country.
- vi. Further, where the debt market experiences excess liquidity, the government intends to leverage on these reforms to tap cheap monies and deposit into the Sinking Fund. These resources may be used to retire expensive targeted loans and create additional fiscal space to support priority development expenditures.
- vii. As alluded above, the Sinking Fund will come in handy to assist the government to achieve its desired policy reforms on the administration of public debt management in Kenya. The proposed Sinking fund will be a liability management tool to help cushion government in servicing debts.
- viii. To achieve this purpose, the guidelines in particular provides: -
 - (i) The definitions, objects and purpose of the Fund;
 - (ii) The capitalization of the Fund which shall be appropriated by Parliament from time to time;
 - (iii) Sources of the fund
 - (iv) The governance structure of the Fund, which is comprised of the Advisory Committee, Fund Administrator and the Secretariat of the Fund
 - (v) The advisory committee shall comprise of;
 - a) Principal Secretary in charge of Finance as the Chairperson;

- b) Director General, Public Debt Management Office as the Secretary
 - c) Director General, Accounting Services and Quality Assurance
 - d) Director General Public Investment and Portfolio Management
- (vi) The work plan, investment plan and any other activities of the sinking fund shall be approved by the Cabinet Secretary on the recommendation of the Advisory Committee for implementation by the secretariat.
 - (vii) The administration of the Fund has been delegated to the Head of the Public Debt Management Office as the Administrator of the Fund to be in charge of the day to day operations of the fund, and may delegate to the secretariat.
 - (viii) Investment of the fund being on Government securities
 - (ix) The guidelines also provide for annual reporting on financial and non-financial activities by the Fund administrator to the Auditor General in accordance with the Public Audit Act and to the Controller of Budget;
 - (x) The guidelines have created an obligation for maintenance of proper records in the management and administration of the Fund
 - (xi) The guidelines provide for the procedure for winding-up of the fund.

2. THE LEGISLATIVE CONTEXT

Parliament delegated the duty to provide guidelines for operationalization of the sinking fund to the Cabinet Secretary responsible for Finance. This is provided for under Regulation 206(3) of the Public Finance Management (National Government) Regulations, 2015 which requires the Cabinet Secretary to publish in the Kenya gazette the guidelines for the management of the Fund. Towards this end, these guidelines are proposed to be operationalized under this regulation.

The National Treasury has complied with provisions of the Statutory Instruments Act, 2013 on requirements of public consultations while preparing these guidelines.

3. POLICY BACKGROUND

- i. Article 214 (1) provides that the public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds; while article (2) provides that for the purposes of this Article, “the public debt” means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.
- ii. Accordingly, section 50 (8) of the PFM Act 2012 provides for the establishment of a Sinking Fund for the redemption of loans raised under the Act by the national government. The loans defined in the PFM Act include both internal and external. Consequently, there is need for the repeal of the General Loans and Stock Act (Cap. 419), which provided for redemption of external debts from the United Kingdom.
- iii. Regulation 206 of the Public Finance Management (National Government) Regulations, 2015 established the Sinking Fund and delegated the power to prepare and publish the guidelines for operationalization of this Fund.

- iv. The Sinking Fund envisaged under the Public Finance Management Act, 2012 is for redemption of both domestic and external loans including the payment of expenses of, or incidental to loans and shall be used for that purpose.
- v. The debt stock has been growing over time, in nominal terms due to fiscal deficit incurred to support expenditure on development projects to spur economic growth. As at end September 2020 the debt was at Kshs. 7,120 billion. Update this number
- vi. Due to the growth in debt, the Government has been spending a substantial amount of resources to service the existing debts.
- vii. Debt service is expected to rise over time as a percentage of revenue and therefore this reform is intended to address this challenge.
- viii. The sinking fund will therefore be key in the following ways:
 - a. With a Sinking Fund Government debt shall carry a lower risk of debt repayment consequently reducing the cost of debt.
 - b. The Fund will help create flexibility in managing existing debt instruments and upcoming maturities.
 - c. The Fund may be used to retire debt early or at maturity as a portion or in full, thereby saving the government interest expenses and creating fiscal space.
 - d. The Fund will facilitate the Government to meet its debt obligations as they fall due leading to better credit rating and lower interest rates.
 - e. The Fund will be useful in easing the financial burden through fiscal stabilization, thereby creating an opportunity to implement future development agenda.
 - f. The Sinking Fund will make national government loans/debts a safer investment and make it attractive to risk averse investors
 - g. The Sinking Fund will earn income through investment of resources in the Fund

4. REGULATORY IMPACT ASSESSMENT

These Guidelines do not have any regulatory impact.

5. PUBLIC CONSULTATIONS

Public consultations were done while preparing the Public Finance Management (Sinking Fund) Guidelines, 2020 with key stakeholders and their inputs considered in the finalization of these guidelines.

It is important to underscore those diverse views were received from different stakeholders especially on the mode of operationalization and debt redemption but largely agreed on the need to operationalize the Fund through these guidelines.

6. GUIDANCE

The National Treasury will sensitize key stakeholders on the operations and management of the Sinking Fund, including Parliament, Development Partners, Auditor General, Controller of Budget and the general public. In addition, the National Treasury will put in place the monitoring and

evaluation framework in place and the need to ensure regular reporting to both Cabinet and Parliament on the progress made by this fund.

7. PERFORMANCE MONITORING AND EVALUATION OF THE FUND

The National Treasury will monitor and review the operations of the sinking fund and make recommendations for improvement where necessary. In addition, the National Treasury will develop policies relating to general administration and management of the Fund.

8. THE NATIONAL TREASURY'S CONTACT PERSON

The contact person at the National Treasury and Planning is the Cabinet Secretary, Hon. (Amb.) Ukur K. Yatani, EGH or the Principal Secretary, National Treasury, Julius Muia, PhD, CBS, P.O. Box 30007-00100, Nairobi.

(8) Legislation under clause (7) shall be supported by more than half of all the members of the National Assembly, and more than half of all the county delegations in the Senate.

(9) Money shall not be withdrawn from the Equalisation Fund unless the Controller of Budget has approved the withdrawal.

Consultation on financial legislation affecting counties.

205. (1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate.

(2) Any recommendations made by the Commission shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill.

PART 2—OTHER PUBLIC FUNDS

Consolidated Fund and other public funds.

206. (1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that—

- (a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or
- (b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ.

(2) Money may be withdrawn from the Consolidated Fund only—

- (a) in accordance with an appropriation by an Act of Parliament;
- (b) in accordance with Article 222 or 223; or
- (c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.

(3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the withdrawal of the money has been authorised by an Act of Parliament.

(4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

(2) Within seven days after either House of Parliament so requests by resolution, the Cabinet Secretary responsible for finance shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show—

- (a) the extent of the total indebtedness by way of principal and accumulated interest;
- (b) the use made or to be made of the proceeds of the loan;
- (c) the provision made for servicing or repayment of the loan; and
- (d) the progress made in the repayment of the loan.

Borrowing by counties.

212. A county government may borrow only—

- (a) if the national government guarantees the loan; and
- (b) with the approval of the county government's assembly.

Loan guarantees by national government.

213. (1) An Act of Parliament shall prescribe terms and conditions under which the national government may guarantee loans.

(2) Within two months after the end of each financial year, the national government shall publish a report on the guarantees that it gave during that year.

Public debt.

214. (1) The public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds.

(2) For the purposes of this Article, "the public debt" means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

PART 4—REVENUE ALLOCATION

Commission on Revenue Allocation.

215. (1) There is established the Commission on Revenue Allocation.

(2) The Commission shall consist of the following persons appointed by the President—

Rigman

- (a) preparing project proposals and submitting them for approval to the National Treasury;
- (b) where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to intended beneficiaries within thirty days of the allocation and disbursement of the loan;
- (c) after disbursement of loans, the loan recipients accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the loan;
- (d) ensuring that during the project identification and design, the intended beneficiaries are involved through the public participatory approach to planning through public forums to enhance leadership, ownership, social accountability and sustainability of the project;
- (e) preparing expected disbursements profiles;
- (f) submitting loan disbursement claims for approval by the National Treasury;
- (g) making comments on draft loan agreement from the National Treasury;
- (h) participating in all consultations and negotiations of all loan agreements for projects and programmes under their jurisdiction; and
- (i) implementing, monitoring and evaluating, in close collaboration with the national government entity responsible for National Planning, all projects and programmes within their jurisdiction.

Sinking Fund

206. (1) There is hereby established a national government fund to be known as the Sinking Fund to be administered by the Head of the Public Debt Management Office.

Establishment of
Sinking Fund.

(2) The purposes of Sinking Fund shall be the payment of expenses of, or incidental to, redemption of an issue of Government securities and the redemption of an issue of Government securities.

(3) The Cabinet Secretary shall, upon approval of these Regulations, publish in the Kenya Gazette the guidelines for the management of the Fund.

PART XV—PUBLIC FUNDS

207. (1) The establishment of a public Fund shall at the minimum meet the following requirements—

Criteria for the
establishment of a
public Fund.

- (a) be initiated through a proposal by the Cabinet secretary responsible for the national government entity under which the functions of the Fund fall clearly setting out the justifications and submit it to the Cabinet Secretary;

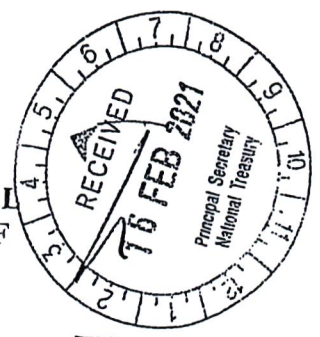
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P.O. Box 30007 - 00100, NAIROBI

BANKI
KUU YA
KENYA



CENTRAL
BANK OF
KENYA



Haile Selassie Avenue
P.O. Box 60000 - 00200 Nairobi, Kenya
Telephone: 2861003/24, Fax: 2716556

February 16, 2021
P. Julius Muia, PhD, CBS
Principal Secretary
The National Treasury
P.O. Box 30007- 00100
NAIROBI

DIRECTOR GENERAL
RECEIVED
17 FEB 2021
THE NATIONAL TREASURY
PUBLIC DEBT MANAGEMENT OFFICE

| PS TREASURY OFFICE | |
|--------------------------|-------------------------------------|
| Take Necessary Action | <input checked="" type="checkbox"/> |
| Please See Me | <input type="checkbox"/> |
| Please Review and Advise | <input type="checkbox"/> |
| Note | <input type="checkbox"/> |
| To Keep in View | <input type="checkbox"/> |
| Noted & Appreciated | <input type="checkbox"/> |
| Please Let's Discuss | <input type="checkbox"/> |

Dear PS,

COMMENTS BY THE CENTRAL BANK OF KENYA ON THE DRAFT GUIDELINES FOR THE OPERATIONALIZATION OF THE NATIONAL GOVERNMENT SINKING FUND

Thank you for your letter, ref: DMD 4/197/'A' dated January 26, 2021, inviting our comments on the draft *Guidelines for the Operationalization of the National Government Sinking Fund*. At the outset, the overall objective of smoothing across time the financial pressures on the Government's accounts—by making regular payments into a dedicated fund ahead of the due date—is well appreciated and supported. We stress that this relates to domestic resources (Kenya shillings) and not foreign currency resources, as the latter are and have always been available to make the external payment on the due date, as part of CBK's mandate.

We have reviewed the draft *Guidelines*, reading them together with the Public Finance Management (PFM) Act and its Regulations, and have the following observations.

First, there is an inconsistency about what portion of Government debt the Sinking Fund, and that needs to be ironed out. Section 50 (8) of the PFM Act provides that:

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

Mr. Mwangi
and from
for the
areas
17/2/21

Further, Regulation 206(2) provides the purpose of the Sinking Fund as follows:

“The purposes of Sinking Fund shall be the payment of expenses of, or incidental to, redemption of an issue of Government securities.” (emphasis added).

Thus, the PFM Act and Regulations constrain the Sinking Fund to be used only for the payment of expenses of, or incidental to, redemption of an issue of Government securities and for no other purpose. In contrast, Sections 3(1) and (2) and 6(1) of the

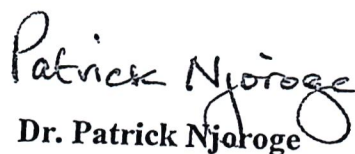
draft *Guidelines* expands the “Objects and Purpose” of the Sinking Fund to cover aspects of National Government loans that are not provided for in the Regulations and the PFM Act as outlined above. As the scope of the *Guidelines* can only be to provide for what is envisaged in the Regulations, they should therefore be redrafted to avoid the appearance of going beyond the Regulations.

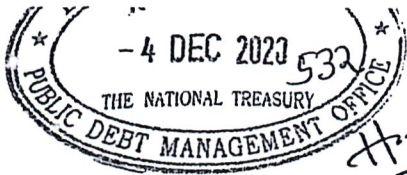
Second, Section 5(e) of the draft *Guidelines* indicates that the source of the Sinking Fund includes “*Foreign exchange gains from external loans to the National Government.*” These “foreign exchange gains and losses” need to be carefully explained as the Sinking Fund is in local currency (Kenya Shillings) and therefore any gains can only arise (and be realized) upon payment of the external obligation at the prevailing exchange rate but having accumulated an amount of local currency that was more than needed. Any other references that may suggest the management of foreign reserves should be eschewed, to avoid confusion with the CBK’s mandate.

Third, in our view, Section III on financial reporting of the Sinking Fund needs to be strengthened to provide more frequent and more detailed reporting to the Cabinet Secretary, the National Assembly and the public at large on the operations of the Sinking Fund. At a minimum, publishing quarterly reports should be adopted.

We therefore recommend a further review of the draft *Guidelines* and sharpening them further in the indicated areas. We welcome this early opportunity to provide feedback on the draft *Guidelines*.

Sincerely,


Dr. Patrick Njoroge



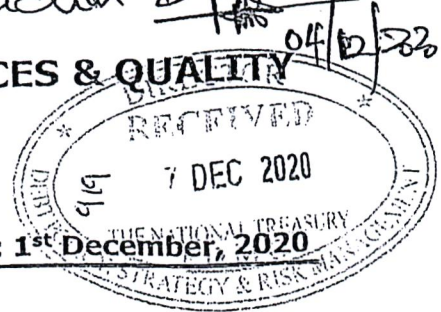
Process recommended



For your necessary action DG/AS

DIRECTORATE OF ACCOUNTING SERVICES & QUALITY ASSURANCE

INTERNAL MEMO



REF:AG13/01/Vol. II (6)

DATE: 1st December, 2020

To : Principal Secretary/National Treasury

(1) noted & agreed for 21/12/2020

thru' : Director General Accounting Services & Quality Assurance

Forwarded/duplicate. Probably DG/Promo should form a small team from various depts to finalize the sub-committee. DG/AS MR 01/12/2020

RE: COMMENTS ON GUIDELINES FOR THE OPERATIONALIZATION OF THE SINKING FUND.

Your memo DMD 4/197 'A' dated 6th November 2020 refers.

Our comments on the said guidelines for the operationalization of the Sinking Fund are as follows:

1. Sources of Funds into the Sinking Fund: -

(4) Mr. Okusimba Factor 4 in 1 Feb 1 here and consider to highlight next

Paragraph 5 (e)

Foreign exchange gains from external loans has been a contested issue between accountants and auditors and it could be important for these Guidelines to speak to the issue. We propose that for determining gains and losses the CBK spot exchange rate when the corresponding budget is approved by parliament to be compared with the CBK spot exchange rate for the loan currency on the day this disbursement or repayment take place to determine the net gain or loss.

pick

Sources of Funds into the Sinking Fund

Paragraph 5 (d)

Comment: The primary purpose of the Fund for is to provide funds redemption of Public debt which may include domestic securities. It is difficult to envision a situation where funds are invested in government paper without a "conflict" occurring. We propose the option to invest idle funds be varied.

3. Expenditures of the Sinking Fund

Paragraph 6 (3)

Comment. This paragraph should be deleted. The expenditure chargeable to the Sinking Fund should be limited to those incurred in pursuance of the objects and purposes for which the Fund is established and in line with Regulations 206 (2) of the Public Finance Management Act (National Government Regulations, 2015).

4. The Annual Financial and Non-Financial Statements.

Paragraph 16

Delete reference to Public Audit Act and re-align wording to this reporting requirement for Funds as per Section 84 and 85 of the Public Finance Management Act (2012). *X examine*

5. The guidelines should also speak to the operational relationship between the Sinking Fund and the Public Debt as a Vote. There should be clarity on what is payable by the Vote and what is payable by the Fund. We propose we stop using the Vote and the Overdraft so that all Public Debt to be paid during the year are planned for and budgeted and exchequer remitted to the Fund on replenishment basis.

There is also need to format the Guidelines on a prose format rather than as currently presented.


PA JONA WALA
AG. DIRECTOR ACCOUNTING SERVICES

Copy to: Debt, Policy Strategy & Risk Management Department
Attn: Humphrey Okusimba

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 0738466721, 0709910000
Email: cob@cob.go.ke/info@cob.go.ke
Website: www.cob.go.ke



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P.O. Box 35616-00100
Nairobi Kenya

Ref: COB/NTP/002/Vol.(25)

9th February, 2021

Dr. Julius Muia, CBS
Principal Secretary
The National Treasury and Planning
NAIROBI

Dear *Dr. Muia,*

SUBMISSION OF COMMENTS ON GUIDELINES FOR THE OPERATIONALIZATION OF THE NATIONAL GOVERNMENT SINKING FUND

Reference is made to your letter Ref.DMD 4/197 'A' dated 26th January 2021.

Forwarded herewith please find our comments for your further necessary action.

Yours

Sincerely,

Dr. Margaret Nyakang'o
CONTROLLER OF BUDGET

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211055, 0738466721, 0709910000
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 Nairobi, Kenya

OCOB COMMENTS TO THE DRAFT PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES 2020

| CLAUSE | REGULATION | PROPOSED AMENDMENT | RATIONALE FOR RECOMMENDATIONS |
|--------|-------------|--|--|
| 1 | Preliminary | Substitute "2020" with "2021" immediately after the word Guidelines Include "and Regulation 206(3) of the Public Finance Management (National Government) Regulations, 2015" immediately after 2012 | To align with the title of the Regulations and the current year Regulation 206(3) of the Public Finance Management (National Government) Regulations, 2015 confers powers to the Cabinet Secretary to develop guidelines for the management of the fund |
| 2 | Preliminary | Define Sinking Fund as defined under Regulation 2 of the Public Finance Management (National Government) Regulations, 2015 Delete the definition of "Loans" and replace with "national government securities" | This definition will provide legislative harmony and define the scope of application of the Guidelines In accordance with Regulation 206 of the Public Finance Management (National Government) Regulations, 2015, the Fund is applicable to National Government Securities and not loans |

Mwaka
 21/2/20

| CLAUSE | REGULATION | PROPOSED AMENDMENT | RATIONALE FOR RECOMMENDATIONS |
|-------------------------|----------------------------|--|---|
| 3(1) | Administration of the Fund | Amend the objective of the Fund to align with the objective of the Fund as provided for under Regulation 206(2) of the Public Finance Management (National Government) Regulations, 2015 | The objective of the Fund as stated is <i>ultra vires</i> . It goes beyond the purpose and objective of the Fund provided for under Regulation 2 and 206 of the Public Finance Management (National Government) Regulations, 2015 |
| 3(2)a, c, d, f, g and h | | Delete the word "loans" and replace with "securities" | The Fund objective deals with securities and not "loans" |
| 5(a) | Capital/Sources of Funds | Provide the definition of "CFS" | CFS is an initial which has not been defined in the Preliminary Section |
| 5 (e) | | Delete the word "debt" and replace with the "National Government Securities" | The Fund's objective deals with securities and not debt |
| 5 (d) | Sources of the Fund | Delete the word "external loans" | The Fund's objective deals with securities and not loans |
| 6 (1) a, b and c | Expenditures of the Fund | Delete paragraph 'd' Income invested from the balances of the fund | The Fund/ Administrator has no powers to invest. The guidelines should be precise on risk free investments. It should be noted that it may not be prudent for the government to purchase its own securities. |
| 6(1) b | Expenditures of the Fund | Delete the word "loans" and replace with "National Government Securities" | The Funds objective deals with securities and not loans |
| | | Delete the word "debt" and replace with "National Government Securities" | The Fund's objective deals with national government securities. Debt has a wider meaning (refer to Article 214(2) of the Constitution). |
| 6(2) | Expenditures of the Fund | The annual work plan should be aligned to the Debt Strategy Paper | To ensure harmony in the management of public debt. |
| | | Include a Regulation to limit the level of expenditure | To comply with Regulation 207(d) of the Public Finance Management (National Government) Regulations, 2015 which sets limit to administrative costs of a Fund. |

Manoj 21/12/21
2 | Page

| CLAUSE | REGULATION | PROPOSED AMENDMENT | RATIONALE FOR RECOMMENDATIONS |
|--------|--|---|---|
| 7(1) | Composition of the Sinking Fund Advisory Committee | Expand the Advisory Committee to include other key players e.g Consider including representatives from the Central Bank of Kenya and KIPPPRA, | To ensure proper formulation of monetary policy and for good governance, the Advisory Committee should include the other key stakeholders outside the National Treasury |
| 10 (c) | Functions of the Fund Administrator | Delete the word "debt" and replace with "National Government Securities" | The Funds objective deals with national government securities. Debt has a wider meaning refer to Article 214(2) of the Constitution. |
| 11(1) | Secretariat to the Fund | Delete "secretariat staff" and replace with "Public Debt Management Office" | The Fund should be assisted by the Public Debt Management Office established under Section 62 of the Public Finance Management Act |

In addition to the above we note that the role of the Controller of Budget to approve for withdrawal of funds has not been provided for. In order to comply with the spirit and letter of the Constitution as provided for under Articles 201, 206 and 228 of the Constitution we opine that the Controller of Budget should authorize withdrawals from this Fund.

Signed on this 9th day of February 2021

CONTROLLER OF BUDGET 

COMMENTS /SUBMISSIONS TO THE DRAFT PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES

| CLAUSE | REGULATION | PROPOSED AMENDMENT | RATIONALE FOR RECOMMENDATIONS | COMMENT |
|--------|-------------|--|--|---|
| 1 | Preliminary | <ul style="list-style-type: none"> ❖ Substitute ‘2020’ with ‘2021’ immediately after the word Guidelines ❖ Include ‘and regulation 206 (3) of the Public Finance Management (National Government) regulations,2015’ immediately after 2012 | <p>To align with the title of the regulations and the current year</p> <p>Regulations 206(3) of the Public Finance Management (National Government) Regulations 2015 confers powers to the Cabinet Secretary to develop guidelines for the management of the fund</p> | Incorporated |
| 2 | Preliminary | <ul style="list-style-type: none"> ❖ Define Sinking Fund as defined under Regulation 2 of the Public Finance Management (National Government) Regulation 2015 ❖ Delete the definition of ‘Loans’ and replace with ‘National Government Securities’ | <p>This definition will provide legislative harmony and define the scope of application of the guidelines</p> <p>In accordance with Regulation 206 of the Public Finance Management (National Government) Regulations,2015, the fund is applicable to National Government Securities and not loans</p> | <p>Incorporated</p> <p>Not incorporated. Debt is more than just Government securities</p> |

| | | | | |
|-------------------------|-----------------------------|--|---|--|
| 3(1) | Administration of the Funds | <ul style="list-style-type: none"> ❖ Amend the objectives of the Fund to align with the objective of the Fund provided for under Regulation 206(2) of the Public Finance Management (National Government) Regulations, 2015 | The objective of the Fund as stated is <i>ultra vires</i> . it goes beyond the purpose and objective of the Fund provided for under Regulation 2 and 206 of the Public Finance Management (National Government) Regulation 2015 | Noted. Incorporated |
| 3(2)a, c, d, f, g and h | | <ul style="list-style-type: none"> ❖ Delete the word "loans" and replace with "securities" | The Fund deal with securities and not "loans" | Not incorporated. Debt is more than just Government securities |
| 5(a) | Capital /source of Funds | <ul style="list-style-type: none"> ❖ Provide the definition of "CFS" ❖ Delete the word Debt and replace with the "National Government Securities" | CFS is an initial which has not been defined in the Preliminary Section The Fund objective deals with securities and not debt | Not incorporated. Attorney General to advise |
| 5(e) | | <ul style="list-style-type: none"> ❖ Delete the word "external loans" | The fund objective deals with securities and not loans | Not incorporated. Attorney General to advise |
| 5(d) | Source of the Fund | <ul style="list-style-type: none"> ❖ Delete paragraph "d" Income invested from the balances of the fund | The Fund/Administrator has no powers to invest. The guidelines should be precise on risk free investments. It should be noted that it may not be prudent for the government to purchase its own securities. | Not incorporated. Attorney General to advise |
| 6(1)a, b and c | Expenditures of the Fund | <ul style="list-style-type: none"> ❖ Delete the word "loans" and replace with "National Government Securities" | The fund objective deals with securities and not loans | Not incorporated. Attorney General to advise |

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|-------|--|---|---|--|
| 6(1)b | Expenditures of the Fund | <ul style="list-style-type: none"> ❖ Delete the word “Debt” and replace with “National Government Securities” | The Funds objective deals with national government securities. Debt has a wider meaning (refer to Article 214(20) of the Constitution). | Not incorporated. Attorney General to advise |
| 6(2) | Expenditures of the Fund | <ul style="list-style-type: none"> ❖ The annual work plan should be aligned to the Debt Strategy Paper ❖ Include a Regulation to limit the level of expenditure | <p>To ensure harmony in the management of public debt</p> <p>To comply with Regulation 207(d) of the Public Finance Management (National Government) Regulations, 2015 which sets limit to administrative cost of Fund.</p> | Not incorporated. Attorney General to advise |
| 7(1) | Composition of the Sinking Fund Advisory Committee | <ul style="list-style-type: none"> ❖ Expand the Advisory Committee to include other key players e.g., consider including representative from the Central Bank of Kenya and KIPRA | To ensure proper formulation of monetary policy and for good governance, the Advisory committee should include other key stakeholders outside the National Treasury | Debt payment is an accountable action and staff should only be those under the accounting office |
| 10(c) | Function of the Fund Administrator | <ul style="list-style-type: none"> ❖ Delete the word “debt” and replace with “National Government Securities | The Funds objective deals with national government securities. Debt has a wider meaning refer to article 214(2) of the Constitution. | Not incorporated. Attorney General to advise |
| 11(1) | Secretariat to the Fund | <ul style="list-style-type: none"> ❖ Delete “secretariat staff” and replace with the “public Debt Management Officer” | The Fund should be assisted by the Public Debt Management Officer | Incorporated |

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| | | | established under Section 62 of the Public Finance Management Act. | Not incorporated. Attorney General to advise |
| | | In addition to the above we note that the role of the Controller of the Budget to approve for the withdrawal of funds has not been provided for. In order to comply with the spirit and letter of the constitution as provided for under Article 201,206 and 228 of the constitution we opine that the Controller of the Budget should authorize withdrawals from this Fund. | | |
| Paragraph 5 | sources of funds: Foreign Exchange gains from external loans to the National Government | <ul style="list-style-type: none"> ❖ It is not clear at what point should the gain/loss be recognized considering that disbursements and repayments take place over a period of time, in most cases, over multiple periods ❖ Does the determination of the gain/ loss take into consideration the time value for money from the disbursement date to full repayment of the loans? | | Incorporated |
| | Investment Income generated from the fund | <ul style="list-style-type: none"> ❖ The primary purpose of the Fund is to provide funds for the redemption of Government loans which may include securities. Therefore, investing in its 'own' securities may result in conflicting interests. Please clarify | | Incorporated |
| Paragraph 6 | Expenditures of the sinking fund:3) Notwithstanding the provision of paragraph 3 | <ul style="list-style-type: none"> ❖ The expenses chargeable to the Sinking Fund shall be limited to those incurred in pursuance of the objects and purposes for which the Fund is established | | Incorporated |

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| | <p>above, the Administrator of the fund with the approval of the Cabinet Secretary may incur any expenditure from the fund which is not included in the expenditure estimates</p> | | |
| <p>Paragraph 16</p> | <p>The annual financial and non-financial statements shall: be submitted to the Auditor General within three months after the end of the financial year in accordance with the Public Audit Act 2015 and a copy thereof submitted to the National Treasury and</p> | <ul style="list-style-type: none"> ❖ The above paragraph may be amended to read as follows; ❖ The annual financial and non-financial statements shall be submitted to the Auditor General within three months after the end of the financial year in accordance with the provisions of the PFM Act 2012, Public Audit Act 2015 and as may be prescribed by the Public Sector Accounting Standards Board. A copy thereof submitted to the National Treasury and the controller of Budget. ❖ Finally, what would be the operational relationship between the Sinking Fund and the Public Debt as a vote? Let it be clear what | <p>Incorporated</p> |

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| | the controller of Budget. | can and cannot be paid from the Sinking Fund. | | |
| Paragraph 5(e) | Sources of fund into the Sinking Fund | <ul style="list-style-type: none"> ❖ Foreign Exchange gains from external loans has been a contested issue between accountants and auditors and it could be important for these guidelines to speak to the issue. we propose that for determining gains and losses to the CBK spot exchange rate when the corresponding budget is approved by parliament to be compared with the CBK spot exchange rate for the loan currency on the day this disbursement or repayment take place to determine the net gain or loss | | Incorporated |
| Paragraph 5(d) | Sources of funds into the Sinking Fund | <ul style="list-style-type: none"> ❖ The primary purpose of the fund for is to provide funds redemption of the public debt which may include domestic securities. It is difficult to envision a situation where idle funds are invested in government paper without a "conflict" occurring. propose that the option to invest idle be varied. | | Incorporated |

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| Paragraph 6(3) | Expenditures of the Sinking Fund | <ul style="list-style-type: none"> ❖ This paragraph should be deleted. the expenditure chargeable to the Sinking Fund should be limited to those incurred in pursuance of the objects and purpose for which the fund is established and in line with regulation 206(2) of the Public Finance Management Act (National Government Regulations, 2015) | | Incorporated |
| Paragraph 16 | The Annual Financial and Non-Financial Statements | <ul style="list-style-type: none"> ❖ Delete reference to Public Audit Act and re-align wording to this reporting requirement for funds as per Section 84 and 85 of the Public Finance Management Act (2012). ❖ The guidelines should also speak to the operational relationship between the Sinking Fund and the Public Debt as a Vote. There should be a clarity on what is payable by the Vote and what is payable by the Fund. We propose we stop using the Vote and the Overdraft so that all Public Debt to be paid during the year are planned for and budgeted and exchequer remitted to the Fund on replenishment basis. ❖ There is also need to format the Guidelines on a prose format rather than as currently presented. | | Incorporated |

DEBT RECORDING AND SETTLEMENT DEPARTMENT

GUIDELINES FOR THE OPERATIONALIZATION OF THE SINKING FUND

Comments

1. Paragraph 5: sources of funds

e) Foreign Exchange gains from external loans to the National Government

Comment:

i. It is not clear at what point should the gain/loss be recognized considering that disbursements and repayments take place over a period of time, in most cases, over multiple periods

ii. Does the determination of the gain/ loss take into consideration the time value for money from the disbursement date to full repayment of the loans?

d) Investment Income generated from the fund

Comment: The primary purpose of the Fund is to provide funds for the redemption of Government loans which may include securities. Therefore, investing in its 'own' securities may result in conflicting interests. Please clarify

2. Paragraph 6: Expenditures of the sinking fund

(3) Notwithstanding the provision of paragraph 3 above, the Administrator of the fund with the approval of the Cabinet Secretary may incur any expenditure from the fund which is not included in the expenditure estimates

Comment: The expenses chargeable to the Sinking Fund shall be limited to those incurred in pursuance of the objects and purposes for which the Fund is established

3. Paragraph 16: The annual financial and non-financial statements shall be submitted to the Auditor General within three months after the end of the financial year in accordance with the Public Audit Act 2015 and a copy thereof submitted to the National Treasury and the controller of Budget.

Comment: The above paragraph may be amended to read as follows;

The annual financial and non-financial statements shall be submitted to the Auditor General within three months after the end of the financial year in accordance with the provisions of the PFM Act 2012, Public Audit Act 2015 and

as may be prescribed by the Public Sector Accounting Standards Board. A copy thereof submitted to the National Treasury and the controller of Budget.

Finally, what would be the operational relationship between the Sinking Fund and the Public Debt as a vote? Let it be clear what can and cannot be paid from the Sinking Fund.

Issues raised during the meeting of the PS National Treasury and Director Generals on the Draft Public Finance Management (Sinking Fund) Guidelines 2020

| S No | Issue | Recommendation |
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| 1. | Differentiate between the current R50 vote used to offset loans and the Sinking Fund. No need to have both in operation. Possibility of replacing R50 vote with the sinking Fund. | The two can still exist. A fund is different from an account |
| 2. | These are guidelines. Is there need to pass them through Parliament or just gazette them | This will be guided by the office of the Attorney General |
| 3. | The Fund has an advisory committee. Oversight committee may be appropriate instead | Oversight committee recommended |
| 4. | The Chair to the advisory committee is the Principal Secretary, National Treasury. In his absence, the Principal Administrative Secretary will chair. There is need not to restrict the Principal Administrative Secretary being the only one to chair in the absence of the Principal Secretary, National Treasury | Any member appointed by the Principal Secretary, National Treasury in his absence can chair the meeting |
| 5. | Committee not appropriate to review policies as one of its responsibilities. | Advisory committee should not review policies |
| 6. | Expenditures to the Fund be flexible to include possibility to pay back to the exchequer | The expenditures are for the purposes of redeeming loans hence cannot be rechannelled back to the exchequer to pay other items |
| 7. | CFS Budget Vote for redemption of debts and other debt related expenses from the exchequer shall be remitted to the Fund on a quarterly basis. This is not tenable and should be continuous | Remittance be continuous and not on a quarterly basis |
| 8. | Share document with Central Bank of Kenya to get their inputs | Document will be shared for comments, though two officers from the Central Bank of Kenya were part of the task force members involved in drafting the guidelines |