ICPAK SUBMISSION ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017

FEBRUARY 2018

Background Information

The Institute for Certified Public Accountants of Kenya (ICPAK) welcomes the review of the Public Finance Management Act 2012 to support accountability and prudent management of public resources. The Institute of Certified Public Accountants of Kenya (ICPAK) has reviewed the Bill and developed a position paper detailing its proposals for your consideration.

Table: Summary of the proposals on the Public Finance Management (Amendment) Bill 2017

Clause		Provision in the Bill	Issue of Concern	Proposed Amendment	Justification
1.	**Clause 3**	Amends Section 5(4)	Clause 3 (a) should add "and Senate" instead of "and Parliament", reason being that it is the mandate of the Senate to oversee the functions of the County's and not the National Assembly.	Clause 3 (a) should add "and Senate" instead of "and Parliament", reason being that it is the mandate of the Senate to oversee the functions of the County's and not the National Assembly.	Article 96 of the Constitution grants the Senate mandate to represents the counties, and protect the interests of the counties and their governments
2.	**Clause 8**	Amends Section 17	Three months is short and closer to the General Election. We propose amendment to six months	Amend 8(b) to read "by inserting the following new subsection immediately after subsection (7)— "(8) six months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in	To curb against pilferage of public resources during an election year.

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				respect of their respective development votes unless with the approval of the National Treasury".	
3.	**Clause 9**	Amends Section 24(3)(b) of the Act	This amendment impacts negatively on the principle of separation of power. This erodes the independence of the Parliamentary Service Commission). The National Treasury shouldn't prescribe standard operating procedures for PSC	Retain the initial provision in the Principal Act	To uphold the principles of separation of powers for the three arms of Government
4.	**Clause 10**	Amends section 35(1)(j)	It's ideal to report quarterly(three months) for consistency and not four as indicated in the amendment	Retain as is in the Principal Act	The current best practices is quarterly reporting (three months)
5.	**Clause 12**	Amends section 39(1)(j)	The issue on "not assented to" of a Bill does not arise. Article 115 of the Constitution that in If the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.	Retain as is in the Principal Act	The issue on "not assented to" of a Bill does not arise. Article 115 of the Constitution that in If the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.
6.	**Clause 14**	Amends section 52	The PFM Act has mandated the Cabinet Secretary to authorize execution of loan agreements. Any designation should happen with the confines of PFM Act. Therefore, no other legislations(as indicated in this amendment) should authorize execution of this responsibility	Amend Section 52 of the Principal Act by deleting 52(2) *in toto*	To be in consistent with the letter and spirit of Public Finance management reforms. Execution of loans is the sole prerogative of the Cabinet Secretary.
7.	**Clause 17**	Amends	Need an objective criterion (policy) for tax waivers and variations. The Cabinet	The Institute supports this amendment. However,	Need for an overarching framework on tax

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			Secretary or any other government official should not have discretionary powers on waivers and variations	there's need for a National Policy/Guidelines on tax waivers and variations. At the moment, this has been left at the discretion of the Cabinet Secretary- National Government, and Governors at the County Level	waivers and variations
8.	**Clause 18**	Amends section 78	Clause 18 proposes to have many other revenue collectors besides KRA. These "others" should be agents of KRA and not the National Government. Having many revenue collectors may not be for the good of the Country's revenue collection. Besides, the proposed amendment creates a loophole which can be misused to affect revenue collection/generation. Revenue being a sensitive matter, there's need to retain as is in the Principal Act	Retain as is in the Principal Act	To enjoy the benefit of consolidation. There has not been complaints on KRA ability
9.	**Clause 25**	Amends section 96(1) by deleting the word entity	The proposed amendment touching on material breach of obligations by county governments is not in tandem with the treatment for similar breaches by national government entities as provided for under Sec. 95 of the principal Act. Sec. 96 of the Principal Act should be amended to align the provisions thereon with those of Sec. 95. The spirit need should cut across the National and County	Amend Sec. 96 to mirror provisions of Sec. 95 of the principal act. This notwithstanding, there is need to interrogate the provision to stop disbursement on account of acts of omission and commission to the detriment of service delivery.	The accounting officers should be personally held liable for the misstatements in accordance with Article 226(5) of the constitution
10.	**Clause 27**	Amends Sec 98 (2) of the	"Material" and "Serious" in accounting terminology are synonymous.	Retain as is in the principal Act	There is no value add in replacing synonyms

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		principal Act			
11.	**Clause 29**	Amends Sec. 105(2) of principal Act	The amendment empowers the Country Treasury to appoint even outsiders to exercise a specified power, on its behalf. The original provision had locked the nomination to officers under county treasury.	Review the amendment as follows: "Any other officer within the county designated by the County Treasury."	For clarity
12.	**Clause 32**	Amends Sec 112 (3)	Provided for under section 112 (2)b Further the provision is misplaced given that 112 (3) focuses on the circumstances of an event and not the fund.	Delete the proposed amendment as it amounts to duplication.	To avoid duplication
13.	**Clause 34**	Amends Sec. 117 of the principal Act	The constitution established a structure in which policy directions are set at the National Government, BPS being one of the policies. Counties must prepare budget priorities in tandem with the national policy guide. This was made possible by the staggered due dates which allowed counties to align their budget priorities to the national priorities. This amendment takes away the possibility of alignment since it requires the presentation of the documents on the same day.	Retain as in the principal Act.	To provide time for County Governments to align the budget with the National Government policy priorities.
14.	**Clause 34(b)**	Amends Sec. 117(6) of the principal Act by substituting "fourteen" days with "thirty days"	In light of the arguments above, and the need to operate within the budget timelines, retain as in the principal Act	Retain as in the principal Act	To allow time for seamless discussion on the budget by the different committees
15.	**Clause 46**	Amends section 137	Some of the CBEFs have been non-functional or ineffective due to the fact that they're chaired by Governors who are	Amend section 137(2)(a) "The County Executive	To ensure smooth operations of the CBEF

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			fairly busy and thus unable to convene meetings. This should amended to have CBEFs convened by the County Executive Committee member Finance	Committee Member responsible for matters related to Finance shall be the chairperson”; Add subsection 137(2)(d) “*In constituting the Forum, the County Government shall ensure that among the professionals, one is* are certified members in good standing of a professional body in accounting or finance recognised by law in Kenya	 Budgeting requires input by professionals knowledgeable in matters finance and accounting.
16.	**Clause 49**	Amends section 143	The PFM Act has mandated the County Executive Committee member for finance to authorize execution of loan agreements at the County level. Any designation should happen with the confines of PFM Act. Therefore, no other legislations(as indicated in this amendment) should authorize execution of this responsibility	Amend Section 143 of the Principal Act by deleting 143(2) *in toto*	To be in consistent with the letter and spirit of Public Finance management reforms.
17.	**Clause 52**	Amends Section 155(5)	Subsection 5 narrows the mandate of the committee to internal audit issues yet the findings of the public auditor/Auditor General (external) are important especially in ensuring that public funds are used in a lawful manner. Amend to broaden the mandate of the Committee to cover issues if both internal	Amend 155(5) by deleting “internal” to read, “A county government entity shall establish an ~~internal auditing~~ audit **committee** whose composition and functions are to be prescribed by the	This should be amended to ensure that the audit committee looks at both internal control and external audit

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			and external audit.	regulations.	
18.	**Clause 65**	Amends Section 187(3)	We propose an additional amendment to include the Institute as a member of the Intergovernmental Budget and Economic Council. Since the main purpose of the Council is to provide consultation on matters relating to budgeting, the economy and financial management it makes sense to incorporate the Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008.	Amend 187(1) by inserting a new paragraph after (h) (i) The Institute of Certified Public Accountants of Kenya	The Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008 will add value to the Council