ICPAK

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The Institute of Certified Public Accountants of Kenya

SUBMISSIONS

ON

THE DRAFT PUBLIC DEBT MANAGEMENT AUTHORITY BILL, 2020

FEBRUARY 2021

1. INTRODUCTION

Sovereign debt management is instrumental in ensuring a stable financial markets and robust economic growth. Public debt management is integral in Kenya in the process of establishing and managing the country's public debt to raise funds for the government projects and to service existing government debts at the lowest cost possible. The Public Debt Management Authority Bill, 2020 seeks to establish an autonomous state agency to rationalize the process by which debt is acquired, how it is reported and approved along the chain with oversight agencies, and how it is recorded.

The Constitution of Kenya 2010 established legal frameworks on public debt management through various legislation such as Public Procurement and Assets Disposal Act 2015, Public Finance Management Act, 2012 which provided a framework for borrowing by the entities of the state and who would guarantee the public loans. It also requires mandatory reporting on public debt management in Kenya.

Section 11 of the PFM Act 2012 establishes the National Treasury which is responsible for handling of public finances and establishment of fiscal policies of the country. Section 62 of the Act established a fully-fledged Public Debt Management Office (PDMO) in the National Treasury with specific objectives and functions related to public debt management.

The Public Debt and Borrowing Policy came to effect after Cabinet approved it on 23 March 2020, to fill the ad hoc public debt policy pronouncements gap and enable the country manage cost and risk associated with the growing debt complexities.

To this extent, it is our considered thought that there are adequate legal safeguards to ensure public debt management principles and strategies are adhered to and in addressing the debt scenario in Kenya.

Under the PFMA, 2012 the provisions provide fiscal responsibility principles on how to manage debt and also establish appropriate institutions to execute such functions as follows:

Section	Provision
49-65	Prescribes for the receipt & use of grants & loans; guaranteeing loans, lending money; establishes a fully-fledged Public Debt Management Office (PDMO) in the National Treasury
49	Authority for borrowing by the National Government

Section	Provision
50	Obligations and restrictions on national government guaranteeing and borrowing- Parliamentary approval. Guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council (IBEC)
55	Establishes the office of the Registrar of the National Government Securities under PDMO. Securities issued by or on behalf of the national government shall be published & publicized
62 – 63	Establishes and empowers PDMO with objects of minimizing debt financing costs, maintaining reliable debt data, prepare annual and medium-term debt strategy

2. PUBLIC DEBT MANAGEMENT AUTHORITY BILL 2020

The Institute has reviewed the Public Debt Management Authority Bill 2020 whose principal object of this Bill is to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government.

In reviewing the Bill, the Institute was guided by a reflection on whether the Country requires another cost centre and independent debt office or whether the status quo of PDMO at National Treasury serves this purpose. To arrive at a conclusion, the Institute has reviewed debt management in other jurisdictions and only left to conclude that drawn from the best international practice, establishing another authority to deal with debt would be tantamount to expanding the government, duplication of functions and imposing a further strain to the taxpayer.

The following table illustrates practices from other jurisdictions on debt management:

TABLE 1: COMPARATIVE ANALYSIS ON DEBT MANAGEMENT

#	Country	Structure of Debt Management
1.	South Africa	▪ Public debt management resides with the Assets and Liabilities Unit at the National Treasury. The National Statistics Office, the National Treasury and the Central Bank join forces in the compilation, dissemination, and analysis of the official data on the finances of the public sector.

#	Country	Structure of Debt Management
		▪ On transparency and reporting, the National Treasury supplies the Central Bank with the National government debt data monthly. The bank complies the debt statistics for national government monthly and releases the data via the bank's internet site.
2.	India	▪ Reserve Bank of India (RBI) manages India's public debt, especially debt denominated in the domestic currency. The management of the Central government's debt is conducted by the RBI under statutory provisions that oblige the Central Bank to delegate its debt to RBI. As part of the ongoing reforms, an interim arrangement for a full-fledged agency managing the public debt to be called Public Debt Management Agency (PDMA) in place.
3.	Canada	▪ Canadian Department of Finance and Bank of Canada is responsible for the management of public debt.
4.	USA	▪ The United States Department of Treasury through the Bureau of the Public Debt manages the public debt. It is responsible for borrowing the money needed to operate the federal government and accounting for the resulting debt.
5.	Australia	▪ Australian Office of Financial Management plays a critical role in debt management. It is within the Treasury Portfolio. It is accountable to the Treasurer and the Secretary to the Treasury ▪ The Treasurer delegates issuance and investment powers through a Direction. Directions authorize AOFM officials to undertake debt issuance and investment operations consistent with the Government Policy and in accordance with the official fiscal forecasts.
6.	Ghana	▪ Debt Management Office (DMO) within the Ghanaian National Treasury manages and reports on direct government debt and guaranteed debts. It also captures all implicit and explicit contingent liabilities. This is akin to the Public Debt Management Office in Kenya.

NOTE:

The debt management strategy in Kenya is consistent with several countries that were mapped for benchmarking. It is therefore our considered opinion that the Bill should be reframed to give proposals on how to strengthen the existing institutional frameworks including the Public Debt Office (PDO) to be efficient and effective in executing their mandate.

However, should the Bill be adopted, the following areas should be reviewed in line with the Institute's proposals:

3. SUMMARY OF ICPAK SUBMISSION ON PUBLIC DEBT MANAGEMENT AUTHORITY BILL,2020

#	Clause	Issue of Concern	ICPAK Recommendations	Justification
1.	**Clause 7: Composition of the Board of the Authority**	The composition of the Board has left out two crucial players in debt management; the Controller of Budget and the Commission on Revenue Allocation	Amend as follows; k) Controller of Budget l) Commission on Revenue Allocation	The Controller of Budget is responsible for issuance of authority to debit the Consolidated Fund Service Account to settle government's debts. Commission on Revenue Allocation is significant when it comes to revenue forecasting, accounting, internal control, and reporting. Debt being one of the financing strategies to plug fiscal deficit, it is imperative to incorporate their advice.
2.	**Clause 7 (h): Board of the Authority**	The list is not exhaustive. It will be important to incorporate Counties through the Council of Governors (CoG) and State Corporations through State Corporations Advisory Committee (SCAC)	Amend to read as follows; 7 (h) (v) The Council of Governors (CoG) (vi) State Corporations Advisory Committee (SCAC)	County governments are significant players in debt accumulation and management. Having a representative from the Council of Governors will ensure their interests are both articulated and aggregated. State Corporations are some of the public entities that are among the greatest contributors to public debt accumulation in Kenya. They should be brought on board to form part of the debt management strategy.
3.	**Clause 7 (h); Board of the Authority**	The Bill does not give consideration to Article 27(8) of the Constitution that provides for two-thirds gender rule on all elective and appointive positions	Amend to read as follows; 7 (4) The appointments shall adhere to the two-thirds gender rule	To comply with the composition requirements of Boards as prescribed by the Constitution.

4.	**Clause 7 (2) Qualification for the Chairperson**	The qualification requirements for the chairperson only limited to Economics and Law.	Amend to read as follows; 7 (2) (b) has a minimum of a bachelor's degree in economics, accountancy or law or any other related field	Debt comprises of financial and other risks related to cashflow that require the expertise of accountants and financial experts.
5.	**Clause 9 Tenure of the Chairperson**	The Bill prescribes a three-year term for the Chairperson of the Board renewable once.	Amend to read The Chairperson and members appointed under section 8 (1) (h) shall hold office for a term of four years renewable for one further term only.	Benchmarked with Central Bank of Kenya, four-year term is sufficient to deliver on the mandate.
6.	**Clause 15: Qualification for the appointment of the Director-General**	The qualification requirements for the chairperson only limited to Economics and Law.	Amend to read as follows; 15 (1) (b) has a minimum of a bachelor's degree in economics, accountancy or law or any other related field	Financial and accountancy background is relevant in the execution of tasks related to financial management and accounting
7.	**Clause 52: Reporting**	Reporting should be comprehensive.	Amend by inserting a new subsection 52 standard terms and conditions of outstanding bonds as well as of other debt instruments employed, including, if applicable, collective action clause Risk management framework to identify and manage the tradeoffs between expected cost and risk in the government debt portfolio.	Information regarding debt management strategies and operations should be made public. documentation describing the legal basis for debt management policy and operations should be ensured.