

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

A BILL for

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

ENACTED by the Parliament of Kenya, as follows—

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

Short title.

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2020.

Amendment of section 2 of No. 18 of 2012.

2. The Public Finance Management Act, 2012, herein after referred to as the principal Act, is amended by inserting the following new definitions in proper alphabetical sequence—

“medium enterprise” means a firm, trade, service, industry or business activity—

- (a) whose annual turnover does not exceed one hundred million shillings;
- (b) which employs between fifty-one and two hundred and fifty employees;
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed two hundred and fifty million shillings; and
 - (ii) the service sector and farming enterprises, where the investment in equipment or registered capital of the enterprise does not exceed one hundred and twenty-five million shillings.

No. 55 of 2012 “micro enterprise” has the meaning assigned to it in section 2 of the Micro and Small Enterprises Act, 2012.

No. 55 of 2012 “small enterprise” has the meaning assigned to in section 2 of the Micro and Small Enterprises Act, 2012.

Amendment of
section 32 of No.
18 of 2012.

3. Section 32 of the principal Act is amended by adding the following new subsections immediately after subsection (2)—

(3) Notwithstanding the provisions of subsection (2), the Cabinet Secretary shall, with respect to credit guarantees extended to private borrowers who are micro, small or medium enterprises, provide to Parliament with the information specified in section 59A (2) when Parliament makes a request under subsection (1).

Amendment of
section 58 of No.
18 of 2012.

4. Section 58 of the principal Act is amended by adding the following new subsections immediately after subsection (4)—

(5) Notwithstanding the provisions of subsections (2) (c), in the case of a private borrower to whom credit is extended for enterprise development or other purpose as may be prescribed by the Cabinet Secretary and does not have sufficient security for the loan, the Cabinet Secretary shall not guarantee the credit extended to such a borrower under subsection (1) unless—

- (a) the borrower is a micro, small or medium enterprise;
- (b) the borrower has complied with the relevant tax laws;
- (c) the borrower has been registered by a county government and holds a valid business permit or trade licence;
- (d) the borrower agrees in writing to comply with the provisions of this Act and any conditions that may be imposed by the Cabinet Secretary with respect to the guarantee.

(6) A guarantee for credit extended to a micro, small or medium enterprise under subsection (5) shall be for a portion of the credit.

(7) A guarantee for credit extended to a micro, small or medium enterprises shall be given under a scheme established by the Cabinet Secretary for the partial mitigation of default risks for credit extended to micro, small or medium enterprises.

(8) The Cabinet Secretary shall prescribe Regulations for the operation of the scheme under subsection (7) which shall, notwithstanding the generality of the foregoing, provide for the following—

- (a) the institutions that shall be eligible to extend credit to micro, small or medium enterprises for which guarantees may be

given under subsection (5);

- (b) enterprises that shall be eligible to be given a guarantee under subsection (5);
- (c) the conditions for a grant of guarantee for credit extended to a micro, small or medium enterprise under subsection (5);
- (d) the proportion of security for the credit that a micro, small or medium enterprise shall provide before being granted a guarantee under subsection (5);
- (e) the types of credit extended to micro, small or medium enterprises that shall be eligible for guarantees under subsection (5);
- (f) the periods for which guarantees for credit to micro, small and medium enterprises shall be applicable;
- (g) the circumstances under which a credit guarantee shall be liquidated if a borrower defaults on credit that was guaranteed under subsection (5); and
- (h) any other relevant matter.

Insertion of new section in No. 18 of 2012.

5. The principal Act is amended by inserting the following new section immediately after section 59—

Cabinet Secretary to submit a report on loan guarantees to micro, small and medium enterprises to Parliament.

59A. (1) The Cabinet Secretary shall prepare a statement of the credit guarantees granted under section 58 (5) and a summary thereon in such detail as the Cabinet Secretary may determine.

(2) The Cabinet Secretary shall, at least once in every year, submit to Parliament the summary prepared under subsection (1) together with a report of—

- (a) the total value of credit guarantees given during that period;
- (b) the total value of credit guarantees liquidated during that period;
- (c) the total value of outstanding credit guarantees on the date of the report;

- (d) the risk assessment of the credit guarantees or classes of guarantees;
- (e) any other relevant information prescribed by Regulations for the purposes of this section.

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to amend the Public Finance Management Act, 2012, in order to provide for guarantees by the Cabinet Secretary for loans advanced to micro, small and medium enterprises. The Bill consists of five clauses.

Clause 1 of the Bill provides for the short title to the Bill.

Clause 2 of the Bill provides for the amendment of section 2 of the Act to insert new definitions of micro enterprises, medium enterprises and small enterprises.

Clause 3 of the Bill provides for the amendment of section 32 of the Act to provide for the information that the Cabinet Secretary shall give Parliament on request relating to guarantees on credit extended to micro, small and medium enterprises. The amendment is intended to align the information provided to Parliament on request to the information required to be given under the proposed section 59A.

Clause 4 of the Bill provides for the amendment of section 58 of the Act by inserting new subsections for the granting of guarantees by the Cabinet Secretary for credit extended to micro, small and medium enterprises which do not have sufficient security for the credit extended to them. The proposed amendment also requires the Cabinet Secretary to establish a scheme for the granting of such guarantees and the making of Regulations to regulate the manner that such guarantees shall be issued and participating financial institutions.

Clause 5 of the Bill provides for the insertion of a new section immediately after section 59 of the Act. the proposed amendment requires the Cabinet Secretary to submit a report on the credit guarantees given to micro, small and medium enterprises for loans advanced to them under section 58 and the period within which the report shall be submitted. The proposal also prescribes the form the report shall take and requires the Cabinet Secretary to prescribe Regulations for that purpose.

The Bill is not a Bill concerning county governments.

The enactment of the Bill shall occasion additional public expenditure which shall be paid out of the estimates appropriated for the National Treasury and Planning.

Dated the, 2020.

UKUR YATANI,
*Cabinet Secretary for
the National Treasury and Planning.*