REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

PROPOSED AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT ACT, 2012

S/No	Section	Current Provision	Proposed Amendment	Justification for amendment
1.	2	New provision	Insert the following new definitions: **''Financial obligations''**, in relation to public debt, includes outstanding amount of actual current liabilities that require payment(s) of principal, interest, fees, commissions and expenses by the government	To define **"Financial obligations''** which was not in the PFM Act, 2012
2.		New provision	**"Public debt"** has the meaning assigned to it under Article 214 (2) of the Constitution	Definition/reference was not provided for
3.		**"County Public Debt"** means all financial obligations attendant to loans raised and securities issued by the county government	Amend **"County Public Debt"** by deleting **"public"** to read "county debt"	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

4.	12(2)(b)	Ensure proper management and control of, and accounting for the finances of the **national** government and its entities in order to promote the efficient and effective use of budgetary resources at the national level	Delete the word **“National”**	This section is to cater for both levels of government

5.	15(2)(d)	Public debt and financial obligations shall be maintained at a **sustainable level as approved by Parliament** for the national government and the county assembly for county government	Delete paragraph (d) and substitute therefor the following new paragraphs: "(d) financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed are maintained at a sustainable level as advised by the Public Debt Management Office and approved by Parliament for the national government and by the county assembly for county government''	Currently the debt limit approved by Parliament is not anchored on sustainability. There is therefore need for Parliament to be advised on the sustainable debt levels as they set the public debt limit

6.	15(4)	The National Treasury shall ensure that the level of **National Debt** does not exceed the level specified annually in the mediumterm national government debt management strategy submitted to Parliament	Delete the words **''national debt''** **a**nd substitute therefor with the words **"public debt"**	The Constitution defines **"public debt"** and not **"national debt"**

7.	31(2)	Where either House of Parliament is canvassing a matter relating to the national debt, the Cabinet Secretary shall submit to Parliament, a report of all loans made to the national government, national government entities, and county governments, not later than seven days after receiving a request to do so from either House of Parliament	delete the words **''national debt''** and substitute therefor with the words **''public debt''**	The Constitution defines **"public debt"** and not **"national debt"**
8.	50.(2)	The national government may borrow money in	Amend by inserting a proviso	There are circumstances under which the debt limit may be

		accordance with this Act or any other legislation and shall not exceed a limit set by Parliament	immediately after the word Parliament. "Provided that if, at any time, the public debt exceeds the limit set under this Act and the Regulations made thereunder, due to depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions, the Cabinet Secretary shall provide Parliament with a written explanation on the said circumstances leading to the breach of the limit and provide a time-bound remedial plan.	exceeded such as depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions and therefore there is need to address such eventualities in law
9.	50	New Insertion	Amend by inserting the following new paragraph immediately after sub section (2): "(2A) For the purposes of sub	For clarity purposes

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			section (2) above fiscal disruptions include; war, health pandemic and natural disasters''	
10.	50(6)	A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.	Delete and substitute therefor the following new subsection: "(6) A public debt and resultant financial obligations incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by Regulations approved by Parliament, that all or part of the public debt and resultant financial obligations is a charge on another public fund established by the national government or any of its entities"	Public debts could have other financial obligations including fees, commissions, charges and other expenses such as insurance, legal etc. which are not explicitly provided for in the provisions
11.	63	New Provisions	Add the following new paragraph immediately after paragraph (h):	To buttress Section 15(2)(d) to ensure that the debt limit approved by Parliament is anchored on sustainability as advised by a

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			"(i) to advise Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing limit"	competent authority (Public Debt Management Office)

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EXPLANATORY MEMORANDUM TO AMENDMENTS TO THE PFM ACT, 2012

Name of the Parent Act: Public Finance Management Act, 2012.
Name of the Ministry: The National Treasury and Planning
Enacted Pursuant to: Section 214(2) of the Constitution of Kenya,2010 and PFM, ACT,2012

1.0 Purpose

It is important to review the relevant provisions of the Public Finance Management (PFM) Act to ensure the terms used in the Act are consistent with the definition of "Public debt" in Article 214(2) of the Constitution.

The main purpose of these Amendments is to give effect to Article 214(2) of the Constitution of Kenya 2010 and Section 50(2) of the PFMA that provides that "the national government may borrow in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament". Further to define what falls within the financial obligations as per the provisions of the Constitution Article 214(2)

2.0 Legislative Context

It is important to review the relevant provisions of the Public Finance Management (PFM) Act to ensure the terms used in the Act are consistent with the definition of "Public debt" in Article 214(2) of the Constitution.

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

Article 214(2) For the purpose if this Article, 'the public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

The proposed amendments to the PFM Act 2012 are meant to address:

(i) the definitional disparity of what constitutes public debt as defined in Article 214 (2) of the Constitution whereas the PFM Act uses the word national public debt

(ii) define financial obligations as referred to in Article 214 (2) of the Constitution to guide the operationalization of the debt limit

(iii) provide for the circumstances under which the debt limit may be exceeded such as depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions and therefore there is need to address such eventualities in law and the requisite redress

(iv) provide for clarity on fiscal disruptions "(2A) For the purposes of sub section (2) above fiscal disruptions include; war, health pandemic and natural disasters''- circumstances under which debt limit may be exceeded

(v) Counties do not deal with "public debt" rather with their own debts which form part of the public debt

(vi) Currently the debt limit approved by Parliament is not anchored on sustainability. There is therefore need for Parliament to be advised on the sustainable debt levels as they set the public debt limit

(vii) The Constitution defines "public debt" and not "national debt"

(viii) To provide for debt related expenditures that could be charged to the CFS as public debts could have other financial obligations including fees, commissions, charges and other expenses such as insurance, legal etc. which are not explicitly provided for in the provisions

(ix) To provide for additional roles to the PDMO to ensure that the debt limit approved by Parliament is anchored on sustainability as advised by a competent authority (Public Debt Management Office)

3.0 Policy Background

These amendments are meant to operationalize The Public Debt and Borrowing Policy as enshrined in the PFM Act 2012 provisions with regard to framework for monitoring the level of Public debt to align it with the provisions of Article 214(2) of the Constitution which states that "public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government

- *What is being done and why*

The Public Finance Management Act,2012 does not provide for definite term of the word "public debt".

Section 2 of the PFMA defines these terms:

"County Public Debt'' means all financial obligations attendant to loans raised and securities issued by the county government" and

"loan "means any borrowing with or without interest from any source or any issuance of a national government security"

Section 50 (2) of the PFMA that gives national government powers to borrow and the rationale for these Amendments is to provide for the use of Public Debt as defined in the Constitution.

4.0 Consultation outcome

These are meant to provide important clarifications and legal alignments and will be included in Miscellaneous Amendments Bill to be submitted to Parliament for further processing including public consultations.

5.0 Guidance

The Attorney General upon publishing the Amendments and in the course of preparation of the amendments will submit to the National Assembly for further guidance including public consultations.

6.0 Impact

6.1 The impact on Fundamental Rights and Freedom
These amendments do not impact negatively on fundamental rights and freedom of the users.

6.2 Financial Implications
These amendments do not have any financial implications on either level of government nor on the public.

7.0 Monitoring and review
The National Treasury and Planning intend to monitor the effect of the operation of the amendments once they come into force and shall from time-to-time review the amendments and may make amendments as appropriate.

8.0 Contact

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.

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THE NATIONAL TREASURY & PLANNING

PROPOSED AMENDMENTS TO PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015

S/No	Regulation	Current provision	Proposed Amendment	Justification for amendment
1.	26(1)(c)	The national public debt shall not exceed nine trillion shillings	Delete paragraph (c) and substitute therefor with the following new paragraphs: (c) "the Cabinet Secretary shall at all times use his best endeavours to maintain public debt at a level not exceeding 55 percent of Gross Domestic Product in Present Value (PV) terms. (d) "Provided that if, at any time, the public debt exceeds the limit set under this Act and the Regulations made thereunder, the Cabinet Secretary shall provide to Parliament a written explanation on the said circumstances leading to the breach of the limit and	To conform with the international best practice in setting debt limits (setting debt limits on the basis of payment capacity (GDP)). Further to this, there are circumstances under which the debt limit may be exceeded such as depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions and therefore there is need to address such eventualities in law

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			provide a time-bound remedial plan''	

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EXPLANATORY MEMORANDUM TO AMENDMENTS TO THE PFM (NATIONAL GOVERNMENT) REGULATIONS, 2015

Name of the Parent Act: Public Finance Management Act, 2012.
Name of the Ministry: The National Treasury and Planning
Enacted Pursuant to: Section 214(2) of the Constitution of Kenya,2010 and PFM, ACT,2012

1.0 Purpose of the Amendments.

The main purpose of these Amendments is to give effect to section 214(2) of the Constitution of Kenya 2010 and Section 50 (2) which states that the "the national government may borrow in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament"

It is important to review the relevant provisions of the PFM(NG) Regulations to ensure the terms used in the Act are consistent with the definition of "Public debt" in Article 214(2) of the Constitution.

The proposed amendments to the PFM (National Governments) Regulations 2015 are meant to address:

(i) To conform with the **international best practice in setting debt limits** (setting debt limits on the basis of payment capacity (GDP)) as guided in the IMF public sector statistics. Further to this, there are circumstances under which the debt limit may be exceeded such as depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions and therefore there is need to address such eventualities in law

2.0 Legislative Context

The need to adopt the same term whenever referring to "public debt"

the words "national public debt'' in Regulation 26(3) (c) of the PFM(NG) Regulations

"debt limit" in Regulation 26(3) (c) and 196 of the PFM (NG) Regulations

3.0 Policy Background

These are amendments meant to operationalize The Public Debt and Borrowing Policy as enshrined in the PFM Act 2012 provisions with regard to framework for monitoring the level of Public debt to align it with the provisions of Article 214(2) of the Constitution which states that "public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government

- *What is being done and why*

The Public Finance Management Act,2012 does not provide for definite term of the word "public debt".

Section 2 of the PFMA defines these terms:

"County Public Debt'' means all financial obligations attendant to loans raised and securities issued by the county government" and

"loan "means any borrowing with or without interest from any source or any issuance of a national government security"

Section 50 (2) of the PFMA that gives national government powers to borrow and the rationale for these Amendments is to provide for the use of Public Debt as defined in the Constitution.

4.0 Consultation outcome

These are meant to provide important clarifications and legal alignments and will be included in Miscellaneous Amendment Bill to be submitted to Parliament for further processing including public consultations.

5.0 Guidance

The Attorney General upon publishing the Amendments and in the course of preparation of the amendments will submit to the National Assembly for further guidance including public consultations.

6.0 Impact 6.*1 The impact on Fundamental Rights and Freedom*

These amendments do not impact negatively on fundamental rights and freedom of the users.

6.2 Financial Implications

These amendments do not have any financial implications on either level of government nor on the public.

7.0 Monitoring and review

The National Treasury and Planning intend to monitor the effect of the operation of the amendments once they come into force and shall from time-to-time review the amendments and may make amendments as appropriate.

8.0 Contact

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.

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PROPOSED AMENDMENTS TO PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENTS) REGULATIONS, 2015

S/No	Regulation	Current provision	Proposed Amendment	Justification for amendment
1.	2	"County Public Debt" has the same meaning as assigned to it under section 2 of the Act	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
2.	25(1)(d)	The county public debt shall never exceed twenty (20%) percent of the county governments total revenue at any one time;	Delete the word **''public''** and substitute therefor the word **"county"**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
3.	27(1)(a)(v)	Level of county public debt;	Delete the word **"public"** and substitute therefor the **"county"**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
4.	86 (2) (d)	The department responsible for public debt management in the County Treasury	Delete the word **"public"** and substitute therefore the word "**county"**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

5.	111 (2) (a)	county public debt; and	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

6.	Title to PART XIV	PART XIV—PUBLIC DEBT MANAGEMENT	Delete the word ''public'' and substitute therefor with the word **"county".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
7.	179(1)	Pursuant to section 50(5) of the Act, a **county public debt** shall not exceed twenty percent (20%) of the county government's most recent audited revenues, as approved by county assembly	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

8.	180(1)	Pursuant to Section 141 (2) of the Act, 2012, the debt limit at any given time shall not exceed the nominal value of the total county public debt that is determined county assembly within the limits set under Section 50 (5) of the Act and in accordance with fiscal responsibility principles under regulation 25 of these Regulations	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

9.	186.	The objectives of **public debt** management are to ensure that the county government's financing needs and payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk, and to promote **development of the domestic debt market** while **ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation**	Delete 186 and substitute therefor the following new regulation 186. The objectives of county debt management are to ensure that the county government's financing needs and payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk	(i). Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt. (ii) promoting "**development of the domestic debt market** and **ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation''** is a legal mandate of PDMO and not for a county government
10.	187 (1)	Any borrowing by the county government shall be informed by the county government medium term debt management strategy and shall set out the framework for the	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

		management of county public debt		
11.	193	A County Treasury shall submit to the National Treasury a report on county public debt as prescribed in these Regulations	Delete the word **"public".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
12.	194(1)	Not later than three months after the end of each financial year, the County Executive Committee Member shall prepare and submit an annual report to the county assembly on public debt	Delete the word **''public''** and substitute therefor the word **"county"**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt
13.	194(2)	The annual public debt report shall be in the format gazetted by the Cabinet Secretary and shall include the following information—	Delete the word **''public''** and substitute therefor the word **"county".**	Counties do not deal with **"public debt"** rather with their own debts which form part of the public debt

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EXPLANATORY MEMORANDUM TO AMENDMENTS TO THE PFM (COUNTY GOVERNMENTS) REGULATIONS, 2015

Name of the Parent Act: Public Finance Management Act, 2012.
Name of the Ministry: The National Treasury and Planning
Enacted Pursuant to: Section 214(2) of the Constitution of Kenya,2010 and PFM, Act,2012

1.0 Purpose of Amendments

The main purpose of these Amendments is to give effect to section 214(2) of the Constitution of Kenya 2010.

The proposed amendments to the PFM (County Governments) Regulations 2015 are meant to address:

(i) Counties do not deal with "public debt" rather with their own debts which form part of the public debt as defined in Article 214 (2) CoK

(ii) promoting "development of the domestic debt market and ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation'' is a legal mandate of PDMO and not for a county government

(iii) To conform with the international best practice in setting debt limits (setting debt limits on the basis of payment capacity (GDP)). Further to this, there are circumstances under which the debt limit may be exceeded such as depreciation of the shilling, significant balance of payment imbalances or abrupt fiscal disruptions and therefore there is need to address such eventualities in law

2.0 Legislative Context

The need to adopt the same term whenever referring to "county debt" in Section 2 of the PFMA as Counties do not deal with public debt rather their own debts which form part of the public debt.
the words "county public debt'' as used in section 2 of the PFMA

"County Public debt "used in Regulation 25 (ii) (d) of the PFM(CG) Regulations

"County Public debt" in Regulation 27(i) (a) v); 86(2) (d)

3. Policy Background

These amendments are meant to operationalize *The Public Debt and Borrowing Policy* as enshrined in the PFM Act 2012 provisions with regard to framework for monitoring the level of Public debt to align it with the provisions of Article 214(2) of the Constitution which states that "public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government

- *What is being done and why*

  The Public Finance Management Act,2012 does not provide for definite term of the word "public debt".

  Section 2 of the PFMA defines these terms:
  "County Public Debt'' means all financial obligations attendant to loans raised and securities issued by the county government" and
  "loan "means any borrowing with or without interest from any source or any issuance of a national government security"

Section 50 (2) of the PFMA that gives national government powers to borrow and the rationale for these Amendments is to provide for the use of Public Debt as defined in the Constitution.

4. Consultation outcome

These are meant to provide important clarifications and legal alignments and will be included in Miscellaneous Amendments Bill to be submitted to Parliament for further processing including public consultations.

5. Guidance

The Attorney General upon publishing the Amendments and in the course of preparation of the amendments will submit to the National Assembly for further guidance including public consultations.

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These amendments do not impact negatively on fundamental rights and freedom of the users.

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