

LAWS OF KENYA

**NATIONAL GOVERNMENT LOANS GUARANTEE
ACT**

No. 18 of 2011

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NATIONAL GOVERNMENT LOANS GUARANTEE ACT

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National Government Loans Guarantee

NO. 18 OF 2011

NATIONAL GOVERNMENT LOANS GUARANTEE ACT

[Date of assent: 27th August, 2011.]

[Date of commencement: 30th August, 2011.]

An Act of Parliament to provide for the transparent, prudent and equitable management of the authority to guarantee loans conferred on the National Government by Article 213 of the Constitution, and for connected purposes 1. Short title

This Act may be cited as the National Government Loans Guarantee Act, 2011.

2. Object of Act

The object of this Act is to ensure that the authority conferred on the National Government to guarantee loans is exercised in a transparent, prudent and equitable manner, consistent with Article 213 of the Constitution.

3. Interpretation

(1) In this Act, unless the context otherwise requires—

“**borrower**” means a person to whom a loan has been or is to be made, and includes a County Government;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**Controller of Budget**” means the Controller of Budget appointed under Article 228 of the Constitution;

“**County Government**” means a County Government established under Article 176 of the Constitution;

“**House of Parliament**” means the National Assembly or the Senate;

“**guarantee**” has the meaning assigned to it in Article 260 of the Constitution;

“**loan**” has the meaning assigned to it in Article 260 of the Constitution;

“**medium term**” means a period of not less than three years but not more than five years;

“**National Government**” means the Government of the Republic of Kenya;

“**the regulations**” means regulations made under this Act.

(2) Until after the first elections under the Constitution, references in this Act to “Cabinet Secretary” shall be construed to mean “Minister”.

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4. Power of Cabinet Secretary to guarantee loans on behalf of the National Government

(1) Subject to subsection (2), the Cabinet Secretary may guarantee the loan of a borrower on behalf of the National Government.

(2) The Cabinet Secretary shall not guarantee a loan under subsection (1) unless—

- (a) the loan is for a capital project;
- (b) the borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it;
- (c) the financial position of the borrower over the medium term is likely to be satisfactory;
- (d) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the National Government;
- (e) where Parliament has passed a resolution setting a limit for the purposes of this section—
 - (i) the amount guaranteed does not exceed that limit; or
 - (ii) if it exceeds that limit, the draft guarantee document has been approved by resolution of both Houses of Parliament;
- (f) the Cabinet Secretary takes into account the equity between the National Government's interests and the County Governments so as to ensure fairness;
- (g) the borrower complies with any conditions imposed by the Cabinet Secretary in accordance with the regulations;
- (h) the loan conforms to any other criteria prescribed by the regulations for the purposes of this section.

(3) Where the Cabinet Secretary declines a request by a County Government to guarantee a loan, the County Government may petition Parliament for a review of the Cabinet Secretary's decision.

(4) A House of Parliament may approve a draft loan guarantee document as provided by subsection (2)(e)(ii) only if it is satisfied that the guarantee is—

- (a) in the public interest;
- (b) the borrower's financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay the interest or other amounts payable in respect of the loan; and
- (c) geared towards stimulating economic growth in a County Government.

(5) To enable the Houses of Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection (2)(e)(ii), the Cabinet Secretary shall prepare and submit to each of the Houses a paper that—

- (a) gives details of the loan that is proposed to be guaranteed, including the amount of the loan and the terms of repayment, and details of the interest or any other amount payable under the loan; and

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- (b) specifies—
 - (i) the National Government's total contingent liability under guarantees given under this section; and
 - (ii) any other information that the Cabinet Secretary considers relevant.

5. Cabinet Secretary to submit statement to Parliament within fourteen days after guaranteeing loan

Within two weeks after the guarantee is entered into, the Cabinet Secretary shall publish and submit to Parliament a statement that—

- (a) states that the guarantee has been entered into; and
- (b) contains details of—
 - (i) the guarantee, including the name and other particulars of the borrower whose loan is guaranteed;
 - (ii) the duration and nature of the guarantee;
 - (iii) a risk assessment in respect of the guarantee; and
 - (iv) any other information prescribed by the regulations for the purposes of this subsection.

6. Where money is payable in respect of guarantee

(1) Subject to subsection (2), money payable under a guarantee shall be a charge on, and payable out of, of the Consolidated Fund without further appropriation than this section.

(2) Money payable under a guarantee may be paid only if the payment has been approved by the Controller of Budget.

(3) If money is paid out of the Consolidated Fund in respect of a guarantee, the Cabinet Secretary shall submit a report to Parliament giving details of the payment.

- (4) The Cabinet Secretary shall include in the report—
- (a) details of the guarantee;
 - (b) the circumstances giving rise to the payment; and
 - (c) such further information as the Cabinet Secretary considers relevant.

7. Recovery of amounts paid in respect of guarantees

(1) Money paid by the Cabinet Secretary under a guarantee (including any expenses incurred by the Cabinet Secretary in respect of the guarantee) shall—

- (a) be a debt due to the National Government from the borrower whose loan was guaranteed; and
- (b) by proceedings brought in a court of competent jurisdiction, be recoverable from the borrower as a debt due to the National Government.

(2) If the Cabinet Secretary considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over time, the Cabinet **No. 18 of 2011** [Rev. 2012]

Secretary may enter into an agreement with the borrower to pay the debt over such period and at such intervals, and subject to such other terms and conditions, as may be specified in the agreement.

(3) The Cabinet Secretary shall not impose terms and conditions in an agreement under subsection (2) which are inconsistent with the terms and conditions specified in the guarantee document.

(4) Where the Cabinet Secretary enters into an agreement under subsection (2), no proceedings under subsection (1)(b) shall be taken unless the borrower defaults under the agreement.

(5) The Cabinet Secretary shall ensure that any money received or recovered from a borrower in respect of money paid under a guarantee entered into under section 4 is paid into the Consolidated Fund.

8. Power of Cabinet Secretary to make regulations for purposes of this Act

(1) The Cabinet Secretary may make regulations, not inconsistent with this Act, for or with respect to any matter—

- (a) that by this Act is required or permitted to be prescribed; or
- (b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body; or (d) may do any combination of those things.

(3) Regulations made under subsection (1) shall not take effect unless approved by a resolution passed by each House of Parliament.

(4) Regulation approved under subsection (3) shall take effect on the day after the date on which both Houses approves them or, if a later date is specified in the regulations, on that later date.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after their submission to it for approval, the House shall be deemed to have approved the regulations.

9. Repeal of Cap. 461

(1) The Guarantee (Loans) Act is repealed.

(2) Despite the repeal of the Guarantee (Loans) Act—

- (a) the provisions of that Act shall continue to apply to and in respect of guarantees given by the National Government before the commencement of this Act; and
- (b) the limit of contingent liability established by resolution of the National Assembly on the 8th July, 1993 under that Act shall continue in effect, until such time as the National Assembly sets a financial limit under section 4(2) of this Act.

[Corr. No. 18/2012.]

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