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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON-

THE PROMPT PAYMENT BILL (*SENATE BILL NO. 16 OF 2021*)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 APR 2022	
DAY: TUESDAY	
TABLED BY:	Hon. MBONI MWAJIKI MEMBER, DC-FINANCE
CLERK-AT THE TABLE:	MATNA WANJIKU

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL 2022

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD	3
PART ONE.....	5
1 PREFACE	5
1.1 ESTABLISHMENT OF THE COMMITTEE.....	5
1.2 MANDATE OF THE COMMITTEE.....	5
1.3 COMMITTEE MEMBERSHIP	6
1.4 COMMITTEE SECRETARIAT.....	7
PART TWO.....	8
2 OVERVIEW OF THE PROMPT PAYMENT BILL (SENATE BILL NO. 16 OF 2021).....	8
2.1 INTRODUCTION	8
2.2 ANALYSIS OF THE BILL	8
PART THREE	10
3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION	10
3.1 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK).....	10
3.2 KENYA BANKERS ASSOCIATION (KBA).....	11
3.3 KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI).....	12
3.4 INVOSOKO AFRICA	13
3.5 NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)	13
3.6 MICRO AND SMALL ENTERPRISES AUTHORITY (MSEA).....	14
3.7 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)	15
3.8 KENYA INSTITUTE OF SUPPLIES MANAGEMENT (KISM).....	15
3.9 THE NATIONAL TREASURY/PUBLIC PROCUREMENT REGULATORY AUTHORITY	16
PART FOUR.....	18
4 COMMITTEE OBSERVATIONS	18
PART FIVE.....	19
5 COMMITTEE RECOMMENDATION.....	19
PART SIX.....	20
6 SCHEDULE OF PROPOSED AMENDMENTS	20

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Prompt Payment Bill (*Senate Bill No. 16 of 2021*) which was passed by the Senate on 2nd December 2021.

The Bill went through the First Reading on 23rd February 2022 and was thereafter committed to the Departmental Committee on Finance and National Planning for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has eleven (11) clauses and seeks to set out the prescribed date for payment of a supplier for goods and services delivered. According to the Bill, a supplier will either be paid within the timelines set out in a contract or within ninety days where the timelines are not provided for in the contract.

Additionally, the Bill provides that if a supplier is not paid within the stipulated timelines, then the amount due to the supplier attracts interest at a rate prescribed by the Central Bank of Kenya (CBK). Further, it provides for offences to Procurement Officers who fail to pay suppliers within the timelines.

Following placement of advertisement in the print media of 10th February 2022 seeking comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee received two (2) written memoranda. The Committee met and discussed the Bill with stakeholders on Tuesday, 22nd March 2022 in the Committee Room on Fifth Floor, Continental House, Parliament Buildings. Eight (8) stakeholders attended the meeting.

Most stakeholders supported the principal objective of the Bill which was to ensure prompt payment of suppliers of goods and services to Ministries Departments and Agencies. They observed that this proposal will increase the liquidity of the suppliers who are mostly **small and medium enterprises** which will make it possible for the businesses to expand and contribute to their creditworthiness, reduce their cost of borrowing and reduce reputational risks associated with borrowing. The National Treasury was opposed to the Bill on grounds that the amendments proposed were already covered in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020.

The stakeholders raised concern on the introduction of offences to accounting officers who may not be responsible for the delayed payment of bills owed to suppliers by Ministries Departments and Agencies. They argued that failure to pay suppliers promptly is occasioned by delays in exchequer releases by the National Treasury. They further argued that payment of interest on the money owed to suppliers will strain the already strained public resources. Details of the stakeholders' submissions are contained in Part III of this Report. All the stakeholders' comments were considered in the determination of the Committee's proposed amendments. Some of the stakeholder proposals were adopted and form part of the proposed Committee's amendments.

While considering the Bill, the Committee observed that enactment of the Bill will ensure suppliers of goods and services to Ministries, Departments and Agencies are paid in time hence increased liquidity of such businesses leading to growth of SMEs and creation of employment opportunities in the country resulting to growth of the country's economy.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank all stakeholders who participated in consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Prompt Payment Bill (*Senate Bill No. 16 of 2021*).

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. ***To study and review all the legislation referred to it;***
- iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in July 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency

Jubilee Party

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency

Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County

ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency

CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency

Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency

MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency

MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
Laikipia County

Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Rose M. Wanjohi
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director, Legal Services

Ms. Laureen O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. Gideon Kipkogei
Hansard Reporter III

Mr. Luka Mutua
Serjeant-At-Arms II

Mr. George Ndenjeshe
Fiscal Analyst III

Ms. Terry Ondiko
Fiscal Analyst III

Ms. Christine Maeri
Audio Officer

PART TWO

2 OVERVIEW OF THE PROMPT PAYMENT BILL (SENATE BILL NO. 16 OF 2021)

2.1 INTRODUCTION

6. The main objective of the Bill is to set out the prescribed date for payment of a supplier. A supplier will either be paid within the timelines set out in a contract or within ninety days where the timelines are not provided in the contract.
7. Additionally, the Bill provides that if a supplier is not paid within the stipulated timelines, then the amount due to the supplier attracts interest at a rate prescribed by the Central Bank of Kenya.
8. Further, it provides for offences to procurement officers who fail to pay suppliers within the timelines.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:

9. **Clauses 1** provides for the short title of the Bill.
10. **Clauses 2** of the Bill provides for the interpretation of terms. Including the term 'prescribed payment date' which sets out the timelines for payment of suppliers.
11. **Clause 3** of the Bill provides for the application of the Act.
12. **Clause 4** of the Bill provides for prompt payment of accounts. It also provides for payment of interest by an entity that fails to pay a supplier within the prescribed timelines.
13. **Clause 5** of the Bill provides for priority payments.
14. **Clause 6** of the Bill provides for the return of invoice.
15. **Clause 7** of the Bill provides for payment of interest by a procuring entity if they fail to pay a supplier within the timeline.
16. **Clause 8** provides that the supplier and procuring entity shall deal with each other fairly and lawfully.
17. **Clause 9** provides for declaration of pending payments.
18. **Clause 10** provides for offences on an accounting officer of a procuring entity who negligently, maliciously or maliciously fails to pay the amount due to a supplier when it falls due.
19. **Clause 11** provides for Regulations
20. The Bill delegates legislative power to the Cabinet Secretary for National Treasury.

21. The Bill affects the functions of county governments and is therefore a Bill concerning county governments for purposes of the Constitution.
22. Enactment of this Bill may occasion additional expenditure of public funds to be provided for through the annual estimates.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

23. Following the call for memoranda from the public through the placement of adverts in the print media on 10th February 2022 and vide a letter REF: NA/DDC/F&NP/2022/14 dated 14th March 2022 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Institute of Certified Public Accountants of Kenya (ICPAK)
- ii. Kenya Bankers Association (KBA)
- iii. Kenya National Chamber of Commerce and Industry (KNCCI)
- iv. InvoSoko Africa
- v. National Gender and Equality Commission (NGEC)
- vi. Micro and Small Enterprises Authority (MSEA)
- vii. Kenya Private Sector Alliance (KEPSA)
- viii. Kenya Institute of Supplies Management (KISM)
- ix. National Treasury and Planning/Public Procurement Regulatory Authority (PPRA)

The stakeholders submitted as follows:

3.1 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

The Director of Public Policy, Mr. Hillary Onami appeared before the Committee on Tuesday, 22nd March 2022. He proposed the following amendments to the Bill:

24. Amend clause 4(3) to read as follows: *'A procuring entity shall pay an interest under this Act for the period beginning on the day after the prescribed payment date and ending on the last day of the month prior to the date on which payment of the amount due is made in full.* This will enable the procuring entity to determine with certainty the amount of interest due and process it alongside the payment due. Full payment is in order to avoid mischief of partial payments to frustrate the spirit of the Bill.

Committee's decision

Their proposal was adopted by the Committee.

25. Clause 7(2) of the Bill be amended in order to clearly specify interest calculation on the basis of the Central Bank of Kenya. There is need for a specific formula or rate. This will guide in the calculation of interest on the overdue amount to be paid for goods, works or services.

Committee's observation

The base rate set by the Central Bank of Kenya is specific.

26. Amend clause 9 to read as follows: *'A person who wishes to enter into a contract for the supply of goods, works or services with a national or county government or private entity shall make a declaration to the accounting officer of the entity on any pending payments owed to a small or micro enterprise'.* The law applies to national government entities, county government entities and private entities.

Committee's observation

The legislation does not affect private entities.

27. Amend clause 10 to read as follows: '*.....shall be liable to: (a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both; (b) if the person is a body corporate, to a fine not exceeding ten million shillings*'. This is for consistency with similar statutes like section 177 of the Public Procurement and Asset Disposal Act, 2015.

Committee's decision

The Committee recommended that clause 10 be deleted because it is covered in section 176(1) (c) of the Public Procurement and Asset Disposal Act, 2015.

28. Amend clause 10 by defining the terms '*negligently*', '*maliciously*' or '*without reasonable*'. This is for clarity and ease in implementation.

Committee's decision

The Committee recommended that clause 10 be deleted because it is covered in section 176(1) (c) of the Public Procurement and Asset Disposal Act, 2015.

29. The Memorandum of Objects and Reasons be amended so as to align the objects and reasons to the right clauses of the Bill. This is because there is a mismatch in the referencing.

3.2 KENYA BANKERS ASSOCIATION (KBA)

The Director Legal, Mr. Raymond Molenje appeared before the Committee on Tuesday, 22nd March 2022 and submitted that the Association was in support of the Bill because it is a great development for the country and the banking industry. He proposed the following amendments to the Bill:

30. The definition of the term '*purchaser*' should be included in the Bill. This is in consideration of the definition of the term '*commercial transaction*'.
31. Definition of the term '*interest*' ought to be expounded to either provide for Central Bank of Kenya rate or the contractual rate of interest. This is because sometimes contracts provide for a specific interest unless Government prefers to standardize the interest application with respect to their contracts.
32. Definition for '*force majeure*' needs to be provided. There could be circumstances that may lead to GoK being unable to perform as per the contractual terms.
33. Definition of '*service*' to be expounded to indicate that it is service related to a procuring entity. This is to avoid ambiguities as to application.
34. Definition of the term '*public entity*' has been omitted. This is to avoid ambiguities as to application.
35. The definition of the term '*accounting officer*' be amended to include the following paragraphs: '*(e) an accounting officer of a procuring entity; or (f) an accounting officer of private entities*'. This is to cover

other entities as envisioned under the Public Procurement and Asset Disposal Act, 2015 and as per clause 3 of the Bill.

Committee's observation

The legislation does not apply to private entities.

36. Amend clause 3 by removing reference to private entities. The inclusion of private entities will contradict the objectives of the Bill and create ambiguities.

Committee's decision

The Committee adopted the proposed amendment.

37. The Bill as drafted falls short of resolving the crisis on pending debts owed to banks. Other punitive measures (apart from charging interest) to address damages or losses accruing out of delayed payments like bank loan losses should be incorporated in the Bill.
38. A special tribunal to deal with pending debts owed by the Government in an expeditious manner be established in the Bill.

3.3 KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI)

The Chief Executive Officer, Mr. Samuel Matonda appeared before the Committee on Tuesday, 22nd March 2022. He submitted that the Ministry was in support of the Bill because it will enable SMEs operate to their optimum level. He proposed the following amendments to the Bill:

39. Amend clause 4 of the Bill by inserting the following new paragraph immediately after paragraph (5): *'(6) the supplier shall retain the title and ownership of the goods until such time when the payment is made in full'*. This is to ensure that the interest of the supplier is protected in law.

Committee's decision

The Committee adopted the proposed amendment.

40. Amend clause 4(4) (c) by inserting the word *'full'* immediately after the words *'to credit the'*. This is to create strong ownership of the entire procured goods, works or services. It also ensures that budgeting and procurement are done with integrity and responsibility.

Committee's decision

The Committee adopted the proposed amendment.

41. Amend sub-clause 5(1) by inserting the words *'by due dates without fail'* immediately after the words *'procuring entity'*. This will ensure that procuring and accounting officers will remain committed to all the terms of the contracts and supply and therefore a strong call for their direct involvement in ensuring the whole process is credible and ties to the budget.

Committee's decision

The Committee adopted the proposed amendment.

42. Amend sub-clause 5(2) by inserting the words '*while strictly adhering to the due dates*' immediately after the words '*first-out*'. The addition of adhering to the due dates removes the possibility of procuring entities not observing payment terms. It will also ensure that the principle of Fairness and Equity prevails and cuts across all the suppliers who have debts.

Committee's decision

The Committee adopted the proposed amendment.

43. Amend sub-clause 6(1) by deleting the word '*fourteen*' and substituting with the word '*seven*'. This is to provide for a short period of time to handle the disputed invoice.

Committee's decision

The Committee rejected the proposed amendment because the seven days' timeline was too short.

3.4 INVOSOKO AFRICA

44. The Chief Executive Officer, Mr. Geoffrey Mwangi appeared before the Committee on Tuesday, 22nd March 2022. He proposed that the Bill be amended in order to include the factoring transactions. Factoring is a transaction where an entity (micro, small or medium enterprise) 'sells' its receivables (dues from a customer) to a third party (a 'factor' like a bank or Non-Banking Financial Company) for immediate funds (partial or full).

Committee's observation

The Committee observed that the proposal by InvoSoko was progressive but new to the Committee and therefore Members needed to be apprised further on the concept of factoring transactions for future legislation.

3.5 NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

The Chairperson of the Commission, Dr. Joyce Mutinda appeared before the Committee on Tuesday, 22nd March 2022 and submitted that the Commission was in support of the Bill because it takes care of the Special Interest Groups like women, persons with disabilities and youth. She proposed the following amendments to the Bill:

45. Amend clause 3 by deleting the words '*the National Government*' and substituting with the words '*all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies*'. The clause as provided includes private entities and also limits the public entities to only National and County governments while the Public Procurement and Asset Disposal Act lists all the public entities.

Committee's observation

The definition provided in the Bill caters for all public entities and not just the National and County governments.

3.6 MICRO AND SMALL ENTERPRISES AUTHORITY (MSEA)

Mr. Richard Omelu, a Director at the Authority appeared before the Committee on Tuesday, 22nd March 2022. He submitted THAT:

46. Amend the words '*micro and small enterprise*' under definitions by deleting the word '*and*' and substituting with the word '*or*'. This is to provide for the proper definition and distinction between a micro versus a small enterprise as provided under the Micro and Small Enterprises Act.

Committee's decision

The Committee adopted the proposed amendment.

47. Amend the definition of the word '*works*' as follows '*the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure*'. This is to further clarify the definition of the term '*works*'.

Committee's decision

The Committee proposed that definition of the word '*works*' be amended as per the Public Procurement and Asset Disposal Act, 2015.

48. Amend the definition of '*prescribed payment date*' by providing for prompt payment for all performed contracts including enterprises owned by youth, women or persons with disabilities, within 60 days from the date of receipt of the invoice. This is because the Government provides incentives for contracting with micro and small enterprises owned by youth, women and persons with disabilities. The prompt payment period of 60 days grants them better security for payment of delivered goods or services.

Committee's decision

The Committee adopted the proposed amendment.

49. Amend clause 3 by defining and shedding light on the role of the private entities when it comes to implementation of the Prompt Payment Act.

Committee's observation/decision

The legislation does not apply to private entities. The Committee therefore proposed deletion of reference to private entities.

50. Clauses 4, 5 and 7 are similar to the provisions under Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020. It should be aligned to complement the Regulations.

Committee's observations

- i. **The provisions in the Bill under clause 4 and 7 are more comprehensive than what is provided under Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020.**
- ii. **The Committee agreed with the proposal to delete clause 4.**

51. Amend clause 9 by including the requirement that the supplier settles any and all pending payments to MSEs within sixty (60) days of the date of declaration. This is to address the constraints suffered by the MSE sector in accessing payment for products and services rendered to bigger enterprises/suppliers.

Committee's observation

This has been carried in the definition of the term '*prescribed payment date*'. The Committee has proposed that payment be made within sixty days.

52. Under clause 10, in order to avoid misinterpretation of the law and to establish fairness, there is need to review the persecution being offered for the offence committed. The persecution should be commensurate to the offence committed. The implication of persistent delay in disbursements to both National Government and county government entities should be considered in the Bill.

Committee's decision

The Committee recommends that the clause be deleted because it is covered in section 176(1) (c) of the Public Procurement and Asset Disposal Act, 2015.

3.7 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

53. In a letter, Ref. 088/03-PPD/2022 dated 22nd March 2022, the Chief Executive Officer, Ms. Carole Kariuki submitted that Kenya Private Sector Alliance supported the Bill in its entirety because it sought to provide for prompt payment for the supply of goods, works or services procured by the National Government, County governments and private entities. This will solve the problem of pending bills in government and increase liquidity for businesses as they will be paid within a stipulated period of time or have late payments attracting interest.

3.8 KENYA INSTITUTE OF SUPPLIES MANAGEMENT (KISM)

In a letter, Ref: KISM.2022/437 dated 21st March 2022, the Acting Chief Executive Officer of the Institute, Dr. Martin Gachukia proposed the following amendments to the Bill:

54. Clause 2 (b) on the definition of the words '*prescribed payment date*' be amended by deleting the words '*ninety days*' and substituting them with the words '*sixty days*'. This is in accordance with the Public Procurement and Asset Disposal Regulations, 2020.

Committee's decision

The Committee adopted the proposed amendment.

55. Amend clause 10 by deleting the words '*.....to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both*' and substituting with the following '*...to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both*'. This is in line with section 176 of the Public Procurement and Asset Disposal Act, 2015.

Committee's decision

The Committee recommended that clause 10 be deleted because it is covered in section 176(1) (c) of the Public Procurement and Asset Disposal Act, 2015.

3.9 THE NATIONAL TREASURY/PUBLIC PROCUREMENT REGULATORY AUTHORITY

The Chief Administrative Secretary for National Treasury and Planning, Hon. Nelson Gaichuhie appeared before the Committee on Tuesday, 22nd March 2022 and stated that the National Treasury did not support the Bill because all the proposals in it were covered in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020. He submitted as follows on the specific clause of the Bill, THAT:

56. The proposal in clause 4 of the Bill is provided for under Regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020.

Committee's observation

The provision in the Bill is more comprehensive than that provided in Regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020.

57. The amendment proposed in clause 5 of the Bill is covered under Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020.

Committee's decision

The Committee agreed to the proposed amendment.

58. They did not support the proposal in clause 6 of the Bill on return on invoice noting that it should be addressed under the contract agreement between the supplier and the PE under the dispute mechanism clause.

Committee's observation

The Committee observed that there was no harm in anchoring the provision in an Act.

59. The proposal under clause 7 of the Bill on interest rates is covered under Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020.

Committee's observation

The Committee observed that the Regulations refer to the commercial bank rate while the Bill refers to the base rate set by Central Bank of Kenya. The two are not the same hence the decision to carry the amendment.

60. The amendment on clause 8 of the Bill on fair dealing was not supported by National Treasury because the conditions on how the two parties should treat each other are specified in the Contract Agreement on their obligations.

Committee's observation

The Committee observed that there was no harm in anchoring the provision in an Act.

61. The proposal under clause 10 of the Bill on offences and sanctions for delays in payment beyond contractual period is contained in section 176 (1) (c) of the Public Procurement and Asset Disposal Act, 2015.

Committee's decision

The Committee was agreeable to the proposed amendment.

PART FOUR

4 COMMITTEE OBSERVATIONS

Upon reviewing the Bill, the Committee observed the following:

62. The Bill will ensure that suppliers of goods and services to Ministries, Departments and Agencies are paid in time hence increase liquidity of such businesses leading to growth of SMEs and creation of employment opportunities in the country resulting to growth of the country's economy.
63. The Bill will bring sanity and prudence in use of public funds.
64. The Bill will ensure that Ministries, Departments and Agencies stick to their procurement plans.

PART FIVE

5 COMMITTEE RECOMMENDATION

65. The Committee having reviewed the Prompt Payment Bill (*Senate Bill No. 16 of 2021*) recommends that the House approves the Bill with amendments as proposed in the schedule in chapter 6.

PART SIX

6 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 2

66. **THAT**, the Bill be amended in clause 2–

- (a) in the definition of the term “*micro and small enterprise*” by deleting the word “*and*” appearing immediately after the word “*micro*” and substituting therefor the word “*or*” wherever it appears;

Justification

To provide for a proper definition and distinction between a micro versus a small enterprise as provided for in the Micro and Small Enterprises Act.

- (b) in the definition of the term “*prescribed payment date*” in paragraph (b) by deleting the words “*ninety days*” and substituting therefor the words “*sixty days*”.

Justification

This is to harmonize the period with that provided in Regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020.

CLAUSE 3

67. **THAT**, the Bill be amended in clause 3 by deleting the word “*private entities*”.

Justification

The legislation does not apply to private entities.

CLAUSE 4

68. **THAT**, clause 4 of the Bill be amended in–

- (a) sub-section (3) by inserting the words “*in full*” immediately after the word “*made*”; and

Justification

This is to protect the interest of the supplier.

- (b) sub-section (4) by deleting the word “*full*” appearing in paragraph (c) and inserting the word “*full*” immediately after the words “*to credit the*”.

Justification

- i. **It is a clean-up**
- ii. **This is to create strong ownership of the entire procured goods, works or services. It also ensures that budgeting and procurement are done with integrity and responsibility.**

CLAUSE 5

69. **THAT**, clause 5 of the Bill be deleted.

Justification

The provision is covered in Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020.

CLAUSE 10

70. **THAT**, clause 10 of the Bill be deleted.

Justification

The provision is covered under section 176(1)(c) of the Public Procurement and Asset Disposal Act, 2015.

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 APR 2022	DAY:
TABLED BY:	
CLERK-AT THE TABLE:	

SIGNED..... DATE.....

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE PROMPT PAYMENT BILL (SENATE BILL NO. 16 OF 2021)

DATE: 29TH MARCH 2022

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU, MP – VICE- CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	virtual
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	virtual
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	virtual
14. HON EDITH NYENZE, MP	virtual
15. HON. CATHERINE WARUGURU, MP	virtual
16. HON. JAMES GICHUHI MWANGI, MP	virtual
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN THE BOARDROOM ON EIGHTH FLOOR, UKULIMA HOUSE, PARLIAMENT BUILDINGS AND VIRTUALLY ON TUESDAY, 29TH MARCH 2022 AT 10:00 A.M.

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. Isaac W. Ndirangu, MP | - | Vice-Chairperson |
| 2. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 3. Hon. Christopher Omulele, CBS, MP | | |
| 4. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 5. Hon. Daniel E. Nanok, MP | | |
| 6. Hon. David M. Mboni, MP (Chairing) | | |
| 7. Hon. Francis K. Kimani, MP | | |
| 8. Hon. Joshua C. Kandie, MP | | |
| 9. Hon. Stanley M. Muthama, MP | | |
| 10. Hon. Edith Nyenze, MP | | |
| 11. Hon. Catherine Waruguru, MP | | |
| 12. Hon. James Gichuhi Mwangi, MP | | |
| 13. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 14. Hon. Peter Lochakapong, MP | | |

ABSENT WITH APOLOGY

- | | | |
|------------------------------------|---|--------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. (Dr.) Christine Ombaka, MP | | |
| 3. Hon. Andrew A. Okuome, MP | | |
| 4. Hon. Joseph M. Oyula, MP | | |
| 5. Hon. Qalicha Gufu Wario, MP | | |

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------|
| 1. Ms. Rose Wanjohi | - | Senior Clerk Assistant |
| 2. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 3. Ms. Jennifer Ndeto | - | Deputy Director, Legal Services |
| 4. Mr. Gideon Kipkogei | - | Hansard Officer III |
| 5. Mr. George Ndenjeshe | - | Fiscal Analyst III |
| 6. Ms. Terry Ondiko | - | Fiscal Analyst III |
| 7. Ms. Carol Waweru | - | Hansard Officer III |
| 8. Ms. Carolyn Musyoka | - | Hansard Officer III |
| 9. Ms. Christine Maeri | - | Audio Officer |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Clause by clause consideration of the Prompt Payment Bill (Sen. Bill No. 16 of 2021)**
5. **Adoption of the Report on the Consideration of the Prompt Payment Bill (Sen. Bill No. 16 of 2021)**
6. Any Other Business
7. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2022/94: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at twenty-eight minutes past ten o'clock and the Session Chairperson, Hon. David Mboni, MP said the Prayer before calling for self-introduction of those present. He then invited Ms. Jennifer Ndeto, Legal Counsel, to take the Committee through the clause by clause consideration of the Prompt Payment Bill (Sen. Bill No. 16 of 2021).

MIN.NO.NA/F&NP/2022/95: CONFIRMATION OF MINUTES
The Agenda item was deferred.

MIN.NO.NA/F&NP/2022/96: CLAUSE BY CLAUSE CONSIDERATION OF THE PROMPT PAYMENT BILL (SEN. BILL NO. 16 OF 2021)

The Committee considered the Bill clause by clause and agreed as follows:

Clause 1: Agreed to

Clause 2

1. Amend the word '*micro and small enterprise*' by deleting the word '*and*' and substituting with the word '*or*'.

Justification

To provide for a proper definition and distinction between a micro versus a small enterprise as provided for in the Micro and Small Enterprises Act.

2. Amend the definition of '*works*' to read as follows; '*works is defined as per the Public Procurement and Asset Disposal Act, 2015*'.

Justification

To give a better definition of the word '*works*'.

3. Amend the definition of '*prescribed payment date*' by deleting the word '*ninety*' and substituting with the word '*sixty*'.

Justification

This is to harmonize the period with that provided in Regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020.

Clause 3: Amend by deleting the words '*private entities*'.

Justification

The legislation does not apply to private entities.

Clause 4: Agreed to

Clause 5: delete

Justification

The provision is covered in Regulation 139 of the Public Procurement and Asset Disposal Regulations, 2020.

Clause 6: Agreed to

Clause 7: Agreed to

Clause 8: Agreed to

Clause 9: Agreed to

Clause 10: Delete

Justification

The provision is covered under section 176(1) (c) of the Public Procurement and Asset Disposal Act, 2015.

Clause 11: Agreed to

MIN.NO.NA/F&NP/2022/97:

**ADOPTION OF THE REPORT ON THE
CONSIDERATION OF THE PROMPT
PAYMENT BILL (SEN. BILL NO. 16 OF 2021)**

The Committee adopted the Report on the Consideration of the Prompt Payment Bill (Sen. Bill No. 16 of 2021) having been proposed by Hon. Joshua Kandie, MP and seconded by Hon. Shakeel Shabbir, CBS, MP.

MIN.NO.NA/F&NP/2022/98:

**ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting was adjourned at fifty-three minutes past eleven o'clock. The next meeting will be held on Thursday, 31st March 2022 at 10.00 a.m.

SIGNED.....DATE.....

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN THE COMMITTEE ROOM ON FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AND VIRTUALLY ON TUESDAY, 22ND MARCH 2022 AT 10:00 A.M.

PRESENT

1. Hon. Jimmy O. Angwenyi, MGH, MP (**Chairing**)
2. Hon. Christopher Omulele, CBS, MP
3. Hon. Shakeel Shabbir Ahmed, CBS, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. David M. Mboni, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Edith Nyenze, MP
10. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
11. Hon. Peter Lochakapong, MP

ABSENT WITH APOLOGY

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice-Chairperson |
| 3. Hon. (Dr.) Christine Ombaka, MP | | |
| 4. Hon. Francis K. Kimani, MP | | |
| 5. Hon. Stanley M. Muthama, MP | | |
| 6. Hon. Catherine Waruguru, MP | | |
| 7. Hon. James Gichuhi Mwangi, MP | | |
| 8. Hon. Qalicha Gufu Wario, MP | | |

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------|
| 1. Ms. Rose Wanjohi | - | Senior Clerk Assistant |
| 2. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 3. Ms. Jennifer Ndeto | - | Deputy Director, Legal Services |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Gideon Kipkogei | - | Hansard Officer III |
| 6. Mr. George Ndenjeshe | - | Fiscal Analyst III |
| 7. Ms. Terry Ondiko | - | Fiscal Analyst III |
| 8. Ms. Caroline Musyoka | - | Hansard Officer III |
| 9. Mr. Mohamed Said | - | Serjeant-At-Arms |
| 10. Ms. Christine Maeri | - | Audio Officer III |

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Robert Kamwara | - | Vice-Chairperson |
| 2. Mr. Hillary Onami | - | Director Public Policy |
| 3. Mr. Elias Wakhisi | - | Manager, Public Policy |
| 4. Ms. Nancy Moraa | - | Public Policy & Research Assistant |
| 5. Ms. Sheila Mwathi | | |

KENYA BANKERS ASSOCIATION (KBA)

Mr. Raymond Molenje - Director Legal

KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI)

1. Mr. Samuel Matonda - Chief Executive Officer
2. Ms. Joyce Chelagat - Legal Assistant

INVOSOKO AFRICA

- Mr. Geoffrey Mwangi - Chief Executive Officer

NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

1. Dr. Joyce Mutinda - Chairperson
2. Dr. John Njagi - Director, Corporate Service
3. Mr. Joseph Ndiku - Assistant Director, Finance
4. Mr. Sylvester Mbithi - Senior Legal Officer

MICRO & SMALL ENTERPRISES AUTHORITY (MSEA)

1. Mr. Richard Omelu - Director
2. Ms. Agnes Thiong'o - Legal Officer

THE NATIONAL TREASURY

1. Hon. Nelson Gaichuhie - Chief Administrative Secretary
2. Mr. Elijah Nyamamba
3. Mr. Victor Marege - Assistant Director, Supply Chain
4. Mr. Henock Kirungu - General Manager, Technical Services, PPRA
5. Mr. Peter Ndung'u - Manager, M & E, Research & Advisory Services, PPRA

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Stakeholder engagement on the Prompt Payment Bill (Senate Bill No. 16 of 2021)**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2022/84: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at twenty-five minutes past ten o'clock and the Chairperson said the Prayer before calling for self-introduction of those present. He then invited stakeholders to make their submissions on the Prompt Payment Bill (Sen. Bill No. 16 of 2021).

MIN.NO.NA/F&NP/2022/85: CONFIRMATION OF MINUTES Agenda deferred.

MIN.NO.NA/F&NP/2022/86: STAKEHOLDER ENGAGEMENT ON THE PROMPT PAYMENT BILL (SEN. BILL NO. 16 OF 2021)

The stakeholders appeared before the Committee in the following order:

1. The Institute of Certified Accountants of Kenya (ICPAK)

Mr. Hillary Onami, Director of Public Policy submitted that the Institute was in support of the Bill but noted that the following fundamental issues need to be addressed:

- i. Factors leading to delayed payments in public sector like delayed exchequer releases and disbursement to the spending units.
- ii. The Bill does not consider IPSAS accrual but addresses IPSAS cash yet the government is moving to IPSAS accrual.

- iii. There is need to provide for both demand and supply sides. The procuring entity must be satisfied by the quality of goods and services supplied before payment.
- iv. Accountability institutions should punish government entities that deliberately delay payments to suppliers and contractors in compliance with the Public Procurement and Asset Disposal Act, 2015. MDAs and county governments should enhance synchronization of the strategic plans with the procurement plans, the budget and cash flow projections.
- v. There is need for a collaborative framework between the private sector, professional bodies and the government in verifying and settling all the pending bills.

OBSERVATION

The Committee observed that there is need for financial discipline during procurement of goods and services against the budget and procurement plans and availability of funds.

2. Kenya Bankers Association (KBA)

The Director Legal, Mr. Raymond Molenje submitted that KBA had reviewed the Bill and was in support of the amendments proposed because it will lead to development of the country and the banking industry.

3. Kenya National Chamber of Commerce and Industry (KNCCI)

The Chief Executive Officer, Mr. Samuel Matonda made the following recommendations on the Bill:

- i. The Bill should be considerate to timeline needs of business transactions because prompt payment is critical to cash flow prudential management of companies especially for SMEs.
- ii. Establishment of a Prompt Payment Fund which should be ring-fenced and only utilized for the intended purposes of prompt payment resolutions.
- iii. The Bill should ensure that suppliers of goods and services get paid according to the terms of their contract for the services rendered or goods supplied.
- iv. The National Government should develop a Central Clearing House or a Dispute Resolution Centre where all delayed complaints of payment from both national and county governments should be submitted by the suppliers.

4. InvoSoko Africa

The Chief Executive Officer, Mr. Geoffrey Mwangi proposed that the country needs to adopt a consolidated legal framework called the Factoring Regulation where an entity (MSME) 'sells' its receivables (dues from a customer) to a third party (a bank or NBFC) for immediate funds (partial or full).

OBSERVATION

The Committee observed that InvoSoko's proposal was very progress though it could not be carried in the Prompt Payment Bill, 2021. They noted that there was need to have another meeting with the Company so as to discuss further on their proposal.

5. National Gender and Equality Commission (NGEC)

The Chairperson, Dr. Joyce Mutinda submitted that the Commission was in support of the Bill because it takes care of special interest groups i.e. women, persons with disabilities and youth.

OBSERVATION

The Committee observed that the amendment proposed to clause 4(3) i.e. to delete the words '*procuring entity*' and substitute with the words '*the accounting officer responsible for failure to pay or National Treasury*' was not clear. They were informed that the amendment was proposed because there are instances when the accounting officer can be blamed for failure to pay suppliers or the National Treasury where delays are occasioned by delayed exchequer releases.

6. Micro and Small Enterprises Authority (MSEA)

Mr. Richard Omelu, a Director at MSEA submitted that the Authority supported the Bill as it will provide a legal framework to facilitate prompt for supply of goods, works and services procured by government entities both at the national and county level. The prompt payment of goods supplied will help MSEs increase liquidity required for business expansion thus contributing to their creditworthiness, reduced cost of borrowing and reduce reputational risks associated with borrowing.

7. The National Treasury

The Chief Administrative Secretary, Hon. Nelson Gaichuhie submitted that the National Treasury did not support the Bill because the amendments proposed are covered in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020.

OBSERVATION

The Committee observed that despite the fact that prompt payment is provided for in law, delays were still being experienced by suppliers to MDAs. The Committee was informed that this was occasioned by the fact that exchequer is collected on a day to day basis and at times is not enough to fund for all the items that are budgeted for. In addition, implementation of the existing laws and regulations on prompt payments was inadequate for which the bill under consideration was seeking to address.

(Details of the specific amendments to the Bill proposed by the above stakeholders are contained in Part III of the Report on the Consideration of the Prompt Payment Bill (Sen. Bill No. 16 of 2021).

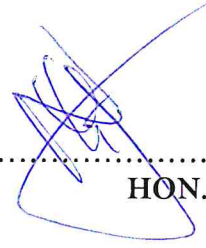
MIN.NO.NA/F&NP/2022/87:

**ADJOURNMENT/DATE
MEETING**

OF NEXT

There being no other business to deliberate on, the meeting was adjourned at forty minutes past one o'clock. The next meeting will be held on Thursday, 24th March 2022 at 10.00 a.m.

SIGNED.....DATE.....


**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

5/4/2022

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD VIRTUALLY ON THURSDAY, 17TH
MARCH 2022 AT 10:00 A.M.**

PRESENT

- | | | |
|---|---|------------------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice-Chairperson (Chairing) |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. Andrew A. Okuome, MP | | |
| 8. Hon. David M. Mboni, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Joseph M. Oyula, MP | | |
| 11. Hon. Joshua C. Kandie, MP | | |
| 12. Hon. Edith Nyenze, MP | | |
| 13. Hon. Catherine Waruguru, MP | | |
| 14. Hon. James Gichuhi Mwangi, MP | | |
| 15. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 16. Hon. Peter Lochakapong, MP | | |

ABSENT WITH APOLOGY

1. Hon. (Dr.) Christine Ombaka, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. Qalicha Gufu Wario, MP

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|---------------------------------|
| 1. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 2. Ms. Jennifer Ndeto | - | Deputy Director, Legal Services |
| 3. Ms. Christine Maeri | - | Audio Officer III |

MEMBER OF PARLIAMENT

Hon. John Njuguna, Wanjiku, MP - Member of Parliament, Kiambaa Constituency

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Consideration of the following Legislative Proposals with the Sponsors:**
 - i. **The proposed Public Procurement and Asset Disposal (Amendment) Bill, 2021 by Hon. Ayub Savula, MP; and**
 - ii. **The proposed Public Procurement and Asset Disposal (Amendment) Bill, 2019 by Hon. John Njuguna Wanjiku, MP.**
5. **Briefing on the following Bills:**
 - i. **The Prompt Payment Bill (Senate Bill No. 16 of 2021); and**
 - ii. **The Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No. 31 of 2020)**
6. Any Other Business
7. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2022/77: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at seventeen minutes past ten o'clock and the Chairperson said the Prayer before calling for self-introduction of those present. He then invited Hon. John Wanjiku, MP to brief the Committee on his proposed Bill.

MIN.NO.NA/F&NP/2022/78: CONFIRMATION OF MINUTES

The Agenda was deferred.

MIN.NO.NA/F&NP/2022/79: CONSIDERATION OF THE PROPOSED PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL, 2021 BY HON. JOHN NJUGUNA WANJIKU, MP

Hon. Wanjiku informed the Committee that the proposed Bill seeks to amend the Public Procurement and Asset Disposal Act (No. 33 of 2015) to provide that a procuring entity shall pay a supplier within the timelines proposed in the contract or within ninety days where the timelines are not prescribed in the contract.

This will especially be important after elections when a new government takes office either in counties or the National Government.

Committee Observation

The Committee observed the Legislative Proposal will cure the problem that has been experienced by suppliers where goods or services are delivered but payment is made after a long time by the procuring entities.

Committee Resolution

The Committee resolved that the proposed Public Procurement and Asset Disposal (Amendment) Bill, 2022 be published.

MIN.NO.NA/F&NP/2022/80: CONSIDERATION OF THE PROPOSED PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2021 BY HON. AYUB SAVULA, MP

Hon. Savula did not attend the meeting and the agenda was therefore stepped down.

MIN.NO.NA/F&NP/2022/81: BRIEFING ON THE PROMPT PAYMENT (SENATE BILL NO. 16 OF 2021)

1. Ms. Jennifer Ndeti, Committee Legal Counsel informed the meeting that the Bill was setting out the prescribed date for payment of a supplier. A supplier will either be paid within the timelines set out in a contract or within ninety days where the timelines are not provided in the contract.
2. Additionally, the Bill provides that if a supplier is not paid within the stipulated timelines, then the amount due to the supplier attracts an interest at a rate prescribed by Central Bank of Kenya (CBK).
3. Further, it provides for offences to procurement officers who fail to pay suppliers within the timelines.

Committee Observations

The Committee observed THAT:

1. The payment of interest to monies owed to suppliers will have an impact on public funds, this therefore ought to be looked at carefully by the Committee during consideration of the Bill.
2. The offences need to be interrogated carefully because payment will be done by public officers though at times the delays are out of their control e.g. delay in exchequer releases.
3. The Bill will bring sanity and prudence in use of public funds.
4. The Bill will ensure that MDAs stick to their procurement plans.
5. Amendments proposed by the Committee will lead to Mediation given that it is a Senate Bill.

MIN.NO.NA/F&NP/2022/82:

BRIEFING ON THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILL NO. 31 OF 2020)

Ms. Jennifer Ndeto, the Committee Legal Counsel informed the meeting that the Bill sets out timelines for the filling of vacancies in the Salaries and Remuneration Commission upon expiry of term for commissioners. It also provides that expiry of term is one of the grounds under which a vacancy is declared in the Commission.

Committee Observation

The Committee observed THAT:

1. The amendment proposed in the Bill was straight forward.
2. Amendments proposed by the Committee will lead to Mediation because the Bill originates from the Senate.

MIN.NO.NA/F&NP/2022/83:

ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at twenty-six minutes past eleven o'clock. The next meeting will be held on Tuesday, 22nd March 2022 at 10.00 a.m.

SIGNED.....

DATE.....

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 16 of 2021)

THE PROMPT PAYMENT BILL, 2021

(A Bill published in the Kenya Gazette Supplement No. 36 of 12th March, 2021 and passed by the Senate, with amendments, on 2nd December,

The Prompt Payment Bill, 2021

2021.)

THE PROMPT PAYMENT BILL, 2021

ARRANGEMENT OF CLAUSES

Clause

- 1— Short title.
- 2— Interpretation.
- 3— Application of the Act.
- 4 — Prompt payment of accounts.
- 5 — Return of invoice.
- 6 — Interest.
- 7 — Fair dealing.
- 8 — Offences.
- 9 — Regulations.

THE PROMPT PAYMENT BILL, 2021

A Bill for

AN ACT of Parliament to provide for prompt payment for the supply of goods, works or services; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Prompt Payment Act, 2019.

Interpretation.

2. In this Act –

“accounting officer” means —

No. 18 of 2012.

(a) an accounting officer of a national government entity referred to in section 67 of the Public Finance Management Act;

No. 18 of 2012.

(b) an accounting officer of a county government entity referred to in section 148 of the Public Finance Management Act;

(c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or

(d) in the case of the Parliamentary Service Commission, the Clerk of the Senate in respect of the Senate and the Clerk of the National Assembly in respect of the National Assembly;

“amount due” means the principal sum owing based on a commercial transaction, including the

applicable taxes, duties, levies or charges specified in the invoice, or provided for in the contract and relating to the said transaction;

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

“commercial transaction” means a transaction between a supplier and a purchaser for the supply of goods, works or services;

“interest” means the prevailing central bank interest rate provided for under section 7 of this Act;

“invoice” means a written document, including an electronic document, provided by a supplier requesting for payment for the supply of goods, works or services to or on the directions of a purchaser;

“micro and small enterprise” means a micro and small enterprise registered under section 4 of the Micro and Small Enterprises Act;

“prescribed payment date” means in relation to a commercial contract –

- (a) the date on which payment is due under the terms of any written contract for the supply of goods, works or services, or
- (b) where there is no written contract or the written contract does not provide for the date of payment, ninety days after –
 - (i) receipt by the purchaser of an invoice for the amount due, where the invoice is received after the completion of works or completed delivery of the goods or provision

services;

(ii) the completion of works, delivery of the goods or provision of services, where the completion or delivery is made at the time of or after receipt by the purchaser of an invoice; or

(iii) such lesser number of days as the Cabinet Secretary may, by notice in the *Gazette* under section 11(2), prescribe;

No. 33 of 2015.

"procuring entity" means a public entity making a procurement to which the Public Procurement and Asset Disposal Act applies;

"services" means any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, non-professional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services;

"supplier" means a person who enters into a procurement contract with a procuring entity to supply goods, works or services; and

"works" means a combination of goods and services for the construction, repair, renovation, extension, alteration, dismantling or demolition of buildings, roads or other structures and includes —

(a) the designing, building, installation, testing, commissioning and setting up of equipment and plant;

(b) site preparation; and

(c) other incidental services.

The Prompt Payment Bill, 2021

Application of the Act.

3. This Act shall apply to payment due for all goods, works, and services procured by private entities, the national government, county governments and any other entity specified as a public entity under section 2 of the Public Procurement and Asset Disposal Act..

No. 33 of 2015.

Prompt payment of accounts.

4. (1) A procuring entity shall pay a supplier by the prescribed payment date.

(2) A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to sections 5 and 6, pay the full contract price and an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.

(3) A procuring entity shall pay an interest under this Act for the period beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made.

(4) For purposes of subsection (3), payment shall be taken to have been made when –

(a) the full amount due is received by the supplier;

(b) the full amount due is credited by, on behalf of, or at the direction of, the procuring entity to an account nominated by the supplier; or

(c) the supplier is put in a position by the procuring entity to be able, by the supplier's own actions, to credit the amount due to such an account.

(5) An interest shall not be waived by the supplier, and shall be included with the amount due for the supply of goods, works or services without demand for its

payment being made by the supplier.

Priority payments.

5. (1) Notwithstanding the provisions of section 4, a procuring entity shall ensure that priority is given to the payment of any outstanding debts for the supply of goods and services to the procuring entity.

(2) In determining which debts shall be given priority under subsection (1), a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out.

Return of invoice.

6. (1) A procuring entity who disputes an invoice may, within fourteen days of receipt of the invoice –

- (a) return the invoice to the supplier; and
- (b) identify in writing any defects in the invoice and require the supplier to correct the defects.

(2) A supplier who receives an invoice from a procuring entity under subsection (1) shall, within fourteen days, deliver a corrected invoice to the procuring entity.

(3) Interest shall accrue upon the expiration of fourteen days after the receipt by the procuring entity of a corrected invoice or after the prescribed payment date, whichever is the later.

Interest.

7. (1) Where a supplier has fulfilled all contractual and legal obligations relating to the supply of goods, services or works and a procuring entity fails to pay for the goods, works, or services by the prescribed payment date the procuring entity shall pay to the supplier interest on the amount due under the relevant contract.

(2) The maximum interest rate chargeable under subsection (1) shall be based on the base rate set and published by the Central Bank of Kenya.

The Prompt Payment Bill, 2021

Fair dealing

8. A supplier and a procuring entity shall, at all times, deal with each other fairly and lawfully.

Declaration of pending payments.

9. (1) A person who wishes to enter into a contract for the supply of goods, works or services with a national or county government entity shall make a declaration to the accounting officer of the entity on any pending payments owed to a small or micro enterprise.

(2) A declaration under subsection (1) shall be made in writing and shall include-

(a) details on when the outstanding payment fell due;

(b) reasons for the delay in payment; and

(c) any agreements entered into between the supplier and the procuring entity for the settlement of the outstanding payment.

Offences.

10. Where a supplier has delivered an invoice to the procuring entity and the accounting officer of the procuring entity negligently, maliciously or without reasonable cause fails to -

(a) return the invoice as provided for under section 6 of this Act; or

(b) pay the amount due by the prescribed payment date or the interest,

commits an offence and is be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Regulations.

11. (1) The Cabinet Secretary shall, within one year of coming into force of this Act, make regulations for

the better carrying into effect of any provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations to provide for –

- (a) the prescribed payment date that is earlier than the ninety days prescribed in the definition of the word “prescribed payment date” in section 2 of this Act;
- (b) any fee which may be charged for anything done under this Act; and
- (c) any other matters as may be necessary for the promotion of the objects this Act.

(3) For the purpose of Article 94(6) of the Constitution —

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act
- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

Cap. 2.
No. 23 of 2013.

The Prompt Payment Bill, 2021

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 2nd December, 2021.


Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.


Speaker of the Senate

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