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SENATE BILLS, 2024

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THE CENTRAL BANK (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Central Bank Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Central Bank (Amendment) Act, 2024.

Short title.

2. Section 11 of the Central Bank Act, in this Act the principal Act, is amended by inserting the following new subsection immediately after subsection (1)-

Amendment of section 11 of Cap. 491.

(2B) The office of the Chairperson is designated as a State office in accordance with Article 260(q) of the Constitution.

3. Section 13 of the principal Act is amended-

Amendment of section 13 of Cap. 491.

(a) in subsection (1) by deleting the words “the National Assembly” appearing immediately after the words “the approval of” and substituting therefor the word “Parliament”; and

(b) by inserting the following new subsection immediately after subsection (1)-

(1A) The office of the Governor is designated as a State office in accordance with Article 260(q) of the Constitution.

4. Section 14 of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph-

Amendment of section 14 of Cap. 491.

(a) a member of the National Assembly, the Senate or a County Assembly.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Central Bank Act to provide that Parliament shall approve the nomination of the Governor of the Central Bank. This amendment is intended to harmonize the approval requirements for the various administrative offices in the Central Bank. Notably, whereas the Act requires that Parliament approves the nomination of the Chairperson of the Board of Directors of the Bank and the nomination of the Deputy Governors of the Bank, section 13 of the Act contemplates that only the National Assembly approves the nomination of the Governor of the Bank. The Bill further proposes to assign the offices of the Chairperson of the Board of Directors and the Governor of the Bank as State Offices in accordance with Article 260(q) of the Constitution. This is to ensure that the stringent requirements applicable to state officers under Article 73, 74, 75, 76, 77 and 78 of the Constitution are extended to the holders of the office of the Chairperson and Governor of the Board of the Bank.

The Bill further proposes to align the Act to the Constitution 2010 and the fairly nascent governance structure of the country. In its present form section 14(1)(a) disqualifies a member of the National Assembly or a member of a local authority under the Local Government Act from nomination to the office of Chairperson, Governor, Deputy Governor or a Director of the Bank. However, under the Constitution, Parliament comprises the National Assembly and the Senate and the defunct local authorities were taken over by the county government. The Bill therefore makes the necessary amendments align the Bill to the Constitution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill proposes to subject the nomination of the Governor of the Central Bank to the approval of Parliament that is the National Assembly and the Senate. The Senate under Article 96(1) represents the counties and serves to protect the interests of the counties and their governments. In considering the suitability of a person nominated to serve as Governor of the Central Bank, the Senate shall take into account the powers of the Governor to determine monetary policy and its effect of the abilities of county governments to discharge their functions under Part 2 of the Fourth Schedule to the Constitution.

The Bill therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th October, 2023.

EDDY OKETCH,
Senator.

Section 11 of the Act of which it is proposed to amend

The Board of Directors

(1) The Board shall consist of—

- (a) a Chairperson appointed by the President;
- (b) a Governor;
- (c) the Permanent Secretary to the Treasury or his representative, who shall be a non-voting member;
- (d) eight other non-executive directors.

(2) The chairperson and directors appointed under paragraph (d) of subsection (1) shall be appointed by the President with the approval of Parliament and shall hold office for a period of four years but shall be eligible for re-appointment for one further term of four years.

(2A) The chairperson shall be appointed by the President through a transparent and competitive process and with the approval of Parliament, and shall hold office for a term of four years but shall be eligible for reappointment for one further term.

(3) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.

(4) A member of the Board may resign his office by writing under his hand addressed to the President which resignation shall take effect one month from the date of receipt of the letter of resignation by the President.

(5) If the Chairperson, Governor or a director dies or resigns or otherwise vacates office before the expiry of his term of office, the President shall appoint another person in his place.

(6) Where the Chairperson, the Governor or a director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that member of the Board to act with the full powers of the member until such time as the President determines that his incapacity has ceased.

(7) A person shall be eligible to be appointed a Director if he—

- (a) is a citizen of Kenya; and
- (b) is knowledgeable or experienced in monetary, financial, banking and economic matters or other disciplines relevant to the functions of the Bank.

Section 13 of the Act of which it proposed to amend—

(1) There shall be a Governor who shall be appointed by the President through a transparent and competitive process and with the approval of the National Assembly.

(2) The Governor shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.

(3) The Governor shall be the chief executive officer of the Bank and, subject to the general policy decisions of the Board, shall be responsible for the management of the Bank, including the organization, appointment and dismissal of the staff in accordance with the general terms and conditions of service established by the Board, and the Governor shall have authority to incur expenditure for the Bank within the administrative budget approved by the Board.

(4) The Governor shall be the principal representative of the Bank and shall, in that capacity have authority—

- (a) to represent the Bank in its relations with other public entities, persons or bodies;
- (b) to represent the Bank, either personally or through counsel, in any legal proceedings to which the Bank is a party;
- (c) to sign individually or jointly with other persons contracts concluded by the Bank, notes and securities issued by the Bank reports, balance sheets, and other financial statements, correspondence and other documents of the Bank.

(5) The Governor may delegate any of his powers provided for in this section to other officers of the Bank.

Section 14 of the Act of which it proposed to amend—

General disqualifications for all Board members

(1) No person shall be appointed as Chairperson, Governor, Deputy Governor or a Director who is—

- (a) a member of the National Assembly or a member of a local authority established under the Local Government Act (Cap. 265);
- (b) a salaried employee of any public entity (except on a secondment basis);
- (c) a director, officer, employee, partner in or shareholder of any specified bank or specified financial institution:

Provided that—

- (i) paragraph (b) shall not be applicable to the representative of the Treasury; and
- (ii) the President may in exceptional cases waive any of the above provisions with respect to any Director (other than the Governor or Deputy Governor) if it is in the interests of the Bank and likely to promote the objects of the Bank under section 4.

(2) The President shall terminate the appointment of a chairperson, Governor, Deputy Governor or a director who—

- (a) becomes subject to any of the disqualifications described in subsection (1);
- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or otherwise declared to be of unsound mind;
- (e) is absent, without the leave of the Board from three consecutive meetings of the Board;
- (f) becomes, for any reason, incapable or incompetent of properly performing the functions of his office:

Provided that the appointment of the Governor shall not be terminated under this paragraph until the question of his removal from office has been referred to a tribunal appointed under subsection (3) and the tribunal has recommended to the President that the Governor ought to be removed for incapability or incompetence as aforesaid.

(3) If the President considers that the question of terminating the appointment of the Governor under subsection (2)(f) ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a chairman and two other members selected by the President from among persons—
 - (i) who hold or have held office as judges of the High Court or the Court of Appeal; or
 - (ii) who are qualified to be appointed as judges of the High Court under section 61(3) of the Constitution;

(b) the tribunal shall inquire into the matter and report on the facts to the President and recommend to him whether the Governor ought to be removed.

(4) Where the question of removing the Governor has been referred to the tribunal under this section, the President may suspend the Governor from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Governor should not be removed.

Special disqualifications for Governor and Deputy Governor

(1) The Governor and the Deputy Governor shall owe their allegiance entirely to the Bank and shall not engage in any paid employment or business or professional activity outside the duties of their respective offices:

Provided that nothing in this subsection shall prevent the Governor or Deputy Governor from accepting or holding any academic office or position in an institution of higher learning or any advisory position or membership in any committee or commission with public responsibility, or from serving in any international financial institution of which Kenya is a member or with which Kenya is associated, or any specialized financial institution established by the Government.

(2) If the Governor or the Deputy Governor engages in any paid employment or business or professional activity outside the duties of his office contrary to subsection (1), the President shall terminate his appointment:

Provided that in the case of the Governor, the provisions of section 14 shall apply.

(3) The President may specifically exempt any transactions or activities from the restrictions of this section.