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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

....

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE FINANCE BILL, 2019

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
<u>NAIROBI</u>

<u>OCTOBER, 2019</u>

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CHAIRPERSON'S FOREWORD

The Finance Bill, 2019 was passed by the National Assembly on Thursday, 26th September 2019 and forwarded to the President in accordance with the provisions of S.O. 153.

The Bill sought to amend various laws relating to taxes and duties and for matters incidental thereto.

In exercise of the powers conferred by Article 115 of the Constitution, H.E. the President expressed his reservation to assent to the Finance Bill, 2019. Consequently, the Memorandum was sent to the National Assembly on Wednesday, 16th October 2019 detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **Thursday, 17th October 2019** conveyed the President's Memorandum on the Finance Bill, 2019 and subsequently referred it to the Departmental Committee on Finance and National Planning for consideration as per the provisions of S.O. 42 of the National Assembly.

In his Memorandum, the President recommended that Clause 45 of the Bill as proposed by the House be deleted and replaced with the following paragraph:

"The Banking Act is amended by repealing section 33B".

In his memorandum, the President stated that capping of interest rates was intended to ensure access to affordable loans in the banking sector, however, this policy objective was not achieved and instead it led to perverse outcomes such as reduction of credit, decline in economic growth, weakening the effectiveness of the monetary policy and mushrooming of shylocks and other unregulated lenders. He added that the government has implemented measures to address concerns relating to affordability and availability of credit and strengthened vulnerable sectors especially medium and small enterprises, women and youth.

The Committee held a meeting on 24th October 2019 to consider the Presidents' Memorandum and in doing so took into account the Speakers Communication which required the Committee to determine the commencement date of the provision under review with regards to existing loan contracts between lenders, that is, banks and other financial institutions, and borrowers."

I wish to report that the Committee has considered the President's Memorandum on the Finance Bill 2019 and has the honour to report back to the National Assembly with the recommendation that it be **approved with amendment.**

Hon. Joseph Limo, M.P.
Chairperson

1 PREFACE

1.1 COMMITTEE MANDATE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under ***Standing Order 216*** whose mandates pursuant to the ***Standing Order 216 (5)*** are 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 COMMITTEE SUBJECTS

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;
   a. The National Treasury and Ministry of Planning
   b. Ministry of Devolution and ASAL
   c. The Commission on Revenue Allocation
   d. Office of the Controller of Budget
   e. Salaries and Remuneration Commission

1.3 Committee Membership

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

Chairperson
Hon. Joseph K. Limo, MP
MP for Kipkelion East Constituency
Jubilee Party

Vice-Chairperson
Hon. Isaac W. Ndirangu, M.P.
MP for Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North Constituency
Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency
FORD-K

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East
Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency
Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
MP Molo Constituency
Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency
ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency
MCC Party

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County
Jubilee Party

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency
Independent Member

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County
Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency
ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency
MCC Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

1.4 Committee Secretariat

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant
Lead Clerk

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Mr. Josephat Motonu
Fiscal Analyst I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Chelang'a Maiyo
Research Officer II

2 THE PRESIDENT'S RESERVATIONS TO THE FINANCE BILL, 2019

In his Memorandum, the President submitted that:-

2.1 BACKGROUND

6. The capping of interest rates was introduced on 14th September, 2016 through section 33B of the Banking Act (Cap. 488) which capped the interest rates chargeable by banks at a rate not more than 4% of the base rate set and published by the Central Bank of Kenya (CBK) with the aim of addressing concerns about affordability and availability of credit especially to the common *mwananchi*. However, the capping of interest rates has caused unintended effects that are significant and damaging to the economy and in particular, the Micro, Small and Medium Enterprises (MSMEs) which are hardest hit.

7. Over the last three years, the Government and the banking sector have initiated programmes and measures to deal with the concerns of affordability and availability of credit from banks and at the same time strengthen the vulnerable sectors especially the MSMEs, Women and Youth. While noting that significant progress has been made, these programmes and measures are yet to achieve the desired results due to the negative effects caused by capping of interest rates. This is the reason for the proposal under clause 43 of the initial Bill to repeal section 33B of the Banking Act.

2.2 EFFECTS OF CAPPING OF THE INTEREST RATES

8. **Reduction of credit to the private sector, particularly Micro, Small and Medium Enterprises (MSMEs)**

   Most commercial banks adjusted their lending business models towards large corporates and the public sector and away from small scale borrowers and individuals. As a result, credit to segments such as MSMEs, that are perceived as risky, declined after imposition of the controls. Recent studies indicate a decline of credit to MSMEs by 10% in the first year following the introduction of interest rate capping.

9. **Decline in economic growth**

A study by CBK showed that rationing out MSMEs from the credit market by commercial banks is estimated to have lowered the country's economic growth by 0.4 percentage points in 2017 and by a further 0.2 percentage points in 2018.

10. **Weakening of the effectiveness of monetary policy with evidence of perverse outcomes making CBK less effective in dealing with economic shocks and delivering on its mandate**

An analysis by CBK on the impact of interest rate capping showed a slowdown in monetary policy transmission to inflation and growth. The results showed that monetary policy transmission to growth and inflation takes 3 to 12 months and 12 to 20 months respectively which is 3 to 5 months longer compared to the period before the introduction of interest rate capping. In addition, the analysis showed evidence of perverse outcomes following a monetary policy action, particularly a reduction in loan advances by some banks after a lowering of the CBK.

11. **Reduction of loan advances by banks**

Studies indicate that the lending activity of smaller banks reduced with outstanding stock of credit declining by about five percent (5%) in the twelve (12) months ending September, 2017. Small banks have been disproportionately hit by capping due to their different business model of relying more on higher-risk/higher-return borrowers such as MSMEs.

12. **Mushrooming of shylocks and other unregulated lenders in the financial sector**

Shylocks and other unregulated lenders have taken advantage of the effects of capping to lend to desperate citizens at exorbitant rates in a predatory manner compounding the already existing problem of lack of access to affordable credit facilities due to prohibitive costs.

13. **In addition to the above, other effects being experienced in the banking sector include:-**

    i. the withdrawal of banks' lending to specific segments of the market;
    ii. the increase in average loan size, reflecting lower access by small borrowers and larger loans to more established firms; and
    iii. the decreased diversity of loan products.

2.3 CONCLUSION AND RECOMMENDATION

14. In conclusion, the President stated that the capping of interest rates has not addressed the intended objective particularly in expanding credit access. The Government is committed to addressing the underlying concerns that led to the introduction of the caps and believes that the programmes and measures that have been put in place will mitigate concerns about affordability and availability of credit more effectively in an environment without the capping of interest rates.

15. He therefore recommended that the Bill be amended by deleting Clause 45 and substituting therefor the following:-

    45. The Banking Act is amended by repealing section 33B.

3 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE FINANCE BILL, 2019

16. The Committee held a meeting on **Thursday, 24th October, 2019** to deliberate on the President's reservations to the Finance Bill, 2019. In considering the Memorandum, the Committee took into consideration the Speaker's guidance which stated that, "*In considering the Reservation, the Committee is expected to additionally apply itself to the question of the commencement date of the provision and the effect of the proposed amendment with regards to existing loan contracts between lenders, that is, banks and other financial institutions, and borrowers*."

17. The Committee deliberated extensively on the memorandum and arrived at three possible options to take: -

    i. **amend the Bill as proposed by the President;**

    If the Bill is amended as proposed in the Presidential Memorandum, this would have an effect on interest rates and the market for loanable funds, Caps on interest rates would be repealed and this therefore means that Banks would be at liberty to vary the terms on loans taken during the time interest rate caps were in force. If this happens, then there would be an increase in the repayable interest on loans which could lead to an increase in non-performing loans. This could have a further effect of crowding out investment and consequently a contraction in economic growth. In this scenario, voting on the amendment will be on a simple majority vote as provided for in S.O. 154(5)(b).

    ii. **amend the Bill with amendments that fully accommodate the President's reservations;**

    In this case, the Committee would adopt the President's reservations to clause 45 and make a further amendment to save the rights of existing borrowers. The voting threshold would be a simple majority as contemplated under Article 122(1) and Article 115 (4) of the Constitution.

    iii. **pass the Bill a second time without amendments by rejecting the President's reservations.**

    This would mean that the Committee proposes that the Bill be passed a second time with clause 45 remaining the same as was proposed by the Committee during passage of the Bill the first time. The voting threshold for this is two-thirds pursuant to Article 115(4) of the Constitution.

18. Subsequently, the Committee settled for the second option where they agreed to adopt the President's reservations to clause 45 and made a further amendment to save the rights of existing borrowers.

4 COMMITTEE RECOMMENDATIONS

19. The Committee having considered the President's reservations to the Finance Bill, 2019 and pursuant to Article 115 of the Constitution, recommends that the House adopts the proposal by the Committee to **adopt** the President's reservations **with amendments** by inserting the following new clause:-

NEW CLAUSE

20. **THAT** the Bill be amended by inserting the following new clause immediately after clause 45-

45A. The Banking Act is mended in section 56 by inserting the following new sub-section immediately after sub-section (3)-

(4) Notwithstanding the repeal of section 33B, any agreement or arrangement to borrow or lend which was made or entered into pursuant to the provisions of section 33B (now repealed), shall continue to be in force on such terms including interest rates, and for the duration specified in the agreement or arrangement.

SIGNED.................................... DATE 29-10-2019

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

ANNEX 1: MINUTES OF THE FIFTY NINTH SITTING OF THE COMMITTEE

ANNEX 2: HIS EXCELLENCY THE PRESIDENT'S MEMORANDUM

ANNEX 3: HONORABLE SPEAKER'S COMMUNICATION

ANNEX 4: ADOPTION SCHEDULE

MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 24TH OCTOBER, 2019 IN 8TH FLOOR UKULIMA HOUSE AT 10.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Christopher Omulele, MP
4. Hon. Dr. Enoch Kibunguchy, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. David M. Mboni, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Lydiah Mizighi, MP
9. Hon. Purity Ngirici, MP
10. Hon. Samuel Atandi, MP
11. Hon. Stanley M. Muthama, MP
12. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Joshua C. Kandie, MP
5. Hon. Mohamed A. Mohamed, MP

ABSENT

1. Hon. Daniel E. Nanok, MP
2. Hon. Francis K. Kimani, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Lead Clerk
2. Ms. Jennifer Ndeto - Principal Legal Counsel
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Ms. Christine Maeri - Audio Officer
5. Mr. John Njoro - Serjeant-At-Arms
6. Mr. Vitalis Augo - Office Assistant
7. Mr. Faustine Rotich - Intern

AGENDA

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to:-**

i. **Consider the President's Memorandum on the Finance Bill, 2019**
ii. **Adopt the report on the consideration of the Equalisation Fund Bill, 2019**

6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/322: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10.28 am and a prayer was said. The Chairperson then invited Members to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2019/323: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2019/324: CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE FINANCE BILL, 2019

The Legal Counsel briefed the meeting on the President's Memorandum. The Committee deliberated extensively on the Memorandum and agreed to adopt the President's reservations to clause 45 and made further amendments as follows:-

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 45-

45A. The Banking Act is mended in section 56 by inserting the following new sub-section immediately after sub-section (3)-

(4) Notwithstanding the repeal of section 33B, any agreement or arrangement to borrow or lend which was made or entered into pursuant to the provisions of section 33B (now repealed), shall continue to be in force on such terms including interest rates, and for the duration specified in the agreement or arrangement.

Justification

This is to ensure that the existing loans are not subjected to new terms after the enactment of the law.

The Committee adopted the report having been proposed and seconded by Hon. Jimmy Angwenyi, MGH, MP and Hon. Joseph Oyula, MP respectively.

MIN.NO.NA/F&NP/2019/325: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE EQUALISATION FUND BILL, 2019

The agenda was deferred to the next meeting.

MIN.NO.NA/F&NP/2019/326: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.50 a.m. The next meeting will be held on Tuesday, 29th October, 2019 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED .... **DATE** 28/10/19.....................

THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE FINANCE BILL, 2019

MEMORANDUM

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto", the short title of which is "The Finance Bill, 2019", was passed by the National Assembly on the 26^{th} September, 2019;

AND WHEREAS the Finance Bill, 2019, was presented to me for assent, in accordance with the provisions of the Constitution, on the 7^{th} of October, 2019;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I refuse to assent to the Finance Bill, 2019 for the reasons set out hereunder:

CLAUSE 45:

The capping of interest rates was introduced on the 14th of September, 2016, through section 33B of the Banking Act (Cap.488) which capped the interest rates chargeable by banks at a rate not more than 4% of the base rate set and published by the Central Bank of Kenya. The purpose of the capping was to address the wide concerns about affordability and availability of credit especially to the common *mwananchi*. There was also a perception of the insensitivity of banks to customer needs. However, it is apparent that the capping of interest rates has caused unintended effects that are significant and damaging to our economy and in particular, the Micro, Small and Medium Enterprises (MSMEs) which are the hardest hit.

Over the last three years, the Government and the banking sector have initiated programmes and measures to deal with the concerns of affordability and availability of credit from banks and at the same time strengthen the vulnerable sectors especially the MSMEs, Women and Youth. While noting that significant progress has been made, these programmes and measures are yet to achieve the desired results due to the negative effects caused by the capping of interest rates. It was this that prompted the proposal under Clause 43 of the initial Bill to repeal section 33B of the Banking Act. However, their re-introduction through Clause 45 of the Bill as passed by Parliament, will not only reverse the gains so far made but also exacerbate the unintended effects alluded to, which include the following:

1. **The reduction of credit to the private sector, particularly Micro, Small and Medium Enterprises (MSMEs):**

   Most commercial banks adjusted their lending business models towards large corporates and the public sector and away from small-scale borrowers and individuals. As a result, credit to segments such as MSMEs, that are perceived as risky, declined after imposition of the controls. Recent studies indicate a decline of credit to MSMEs by 10% in the first year following the introduction of interest rate capping.

2. **The decline in economic growth:**

A study by the Central Bank of Kenya (CBK) showed that rationing out MSMEs from the credit market by commercial banks is estimated to have lowered the country's economic growth by 0.4 percentage points in 2017 and by a further 0.2 percentage points in 2018.

3. **The weakening of the effectiveness of monetary policy, with evidence of perverse outcomes making CBK less effective in dealing with economic shocks and delivering on its mandate:**

A recent analysis by CBK of the impact of interest rate capping showed a slowdown in monetary policy transmission to inflation and growth. The results show that monetary policy transmission to growth and inflation takes 3-12 months and 12-20 months, respectively, which is 3-5 months longer compared to the period before the introduction of interest rate capping. In addition, the analysis showed evidence of perverse outcomes following a monetary policy action, particularly a reduction in loan advances by some banks after a lowering of the Central Bank Rate (CBR).

4. **The reduction of loan advances by banks:**

   Studies indicate that the lending activity of smaller banks reduced with outstanding stock of credit declining by about 5 percent in the 12 months ending September 2017. Small banks have been disproportionately hit by capping due to their different business model of relying more on higher-risk/higher-return borrowers such as MSMEs.

5. **The mushrooming of shylocks and other unregulated lenders in the financial sector:**

   Shylocks and other unregulated lenders have taken advantage of the effects of capping to lend to desperate citizens at exorbitant rates in a predatory manner compounding the already existing problem of lack of access to affordable credit facilities due to prohibitive costs.

6. In addition to the above, other effects being experienced in the banking sector include:

    (a) the withdrawal of banks' lending to specific segments of the market;
    (b) the increase in average loan size, reflecting lower access by small borrowers and larger loans to more established firms; and
    (c) the decreased diversity of loan products.

7. As stated earlier, and since September 2016, the Government and banks have initiated and implemented programmes and measures aimed at supporting greater access to credit at affordable terms by the vulnerable sectors. During the last three years, the Government has scaled up its interventions, particularly through the Women and Youth Funds, to meet the credit needs of these critical segments of the Kenyan economy. The Government is also working with development partners who appreciate the shortcomings associated with the capping of the interest rates and are willing to support the Government in enhancing the targeted programmes.

8. Banks have also been addressing the underlying concerns by reviewing their business models to be more customer-centric adhering to the Kenya Banking Sector Charter issued by CBK in February, 2019. The Charter seeks to promote a banking sector that is responsible and responsive to the needs of Kenyans. The Charter is anchored on the pillars of customer centricity, risk based pricing, transparency and ethics. Further, the banks have introduced new innovative products targeting MSMEs. These products leverage on innovative technology including mobile phone platforms to provide affordable credit to critical segments of the economy particularly MSMEs, Women and Youth. The products, which are in their nascent stages, have great potential to promote affordability and availability of credit particularly to MSMEs. Among the new products that target MSMEs include Stawi (Consortium of 5 banks), M-Jeki (Stanbic Bank), and Dare to Aspire, Dare to Achieve (DADA) (Stanbic Bank), targeting women, and KCB 2JIAJIRI, targeting the youth. Other banks, especially Citibank, Co-operative Bank and Equity Bank have also launched products targeting the financing of agricultural value chains including barley, coffee, dairy and wheat

sectors. KCB has launched the Jaza Duka partnership with Unilever and Mastercard to provide working capital to shopkeepers and small retailers. It should be noted that the success of the interventions by the Government and banks mentioned above, depends on the capacity to scale them up. This capacity, however, continues to be curtailed by the existing interest rate capping.

CONCLUSION

In conclusion, the capping of interest rates has not addressed the intended objective particularly in expanding credit access. The Government remains committed to addressing the underlying concerns that led to the capping. As mentioned above, the recently introduced programmes and measures will mitigate underlying concerns about affordability and availability of credit more effectively in an environment without the capping of interest rates.

RECOMMENDATION:

For the foregoing reasons, I recommend that the Bill be amended by deleting Clause 45 and substituting therefor the following:

Repeal of section 33B of Cap. 488

45. The Banking Act is amended by repealing section 33B.

Dated the 16th of October, 2019.

UHURU KENYATTA,
President

REPUBLIC OF KENYA

TWELFTH PARLIAMENT (THIRD SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

(No. 13 of 2019)

REFERRAL BY H.E. THE PRESIDENT OFTHE FINANCE BILL, 2019

Honourable Members,

You may recall that on 26th September 2019, the National Assembly passed the Finance Bill (National Assembly Bill No. 51 of 2019). Thereafter, the Bill was presented for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, H.E. the President, by way of a Memorandum dated 16th October, 2019 has since referred the Bill back to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution. H.E. the President has expressed reservation to Clause 45 of the Bill which relates to capping of interest rates chargeable on loans advanced by banks and other financial institutions.

In his Memorandum, H.E. the President highlights several factors that have necessitated the proposed amendment to Clause 45 of the Bill, which seeks to amend the Banking Act (Cap.488) by repealing section 33B so as to remove capping of interests rates chargeable on loans. These include the following:

1) The reduction of credit to the private sector, particularly Micro, Small and Medium Enterprises (MSMEs);
2) The decline in economic growth;
3) The weakening of the effectiveness of Monetary Policy;
4) The reduction of loan advances by banks;
5) The mushrooming of shylocks and other unregulated lenders in the financial sector;
6) The withdrawal of banks' lending to specific segments of the market;
7) The increase in average loan size, reflecting lower access by small borrowers and larger loans to more established firms; and
8) The decreased diversity of loan products.

Consequently, the President recommends an amendment to the said Clause of the Bill so as to resolve the above concerns.

Honourable Members, the Reservation of the President, as contained in his Memorandum, now stands committed to the Departmental Committee on Finance and National Planning for consideration. Standing Order 154(2) requires the House to consider the President's Reservations within twenty one (21) days upon receipt of the Memorandum. In this regard, the Committee ought to table its report soonest to allow the House to consider the President's Reservations within the said timeline.

In considering the Reservation, the Committee is expected to additionally apply itself to the question of the commencement date of the provision and the effect of the proposed amendment with regard to existing loan contracts between lenders, that is, banks and other financial institutions, and

Honourable Members, may I, at this point, remind the House of the *Speaker's Communication* delivered on 28th July 2015 concerning the consideration of President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is a simple majority as contemplated under Article 122(1), as read together with Article 115(2)(a) of the Constitution.

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of total override of the President's reservations, including negating his proposed text would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

I wish to further reiterate that only the specific Clause of the Bill that has reservation, namely Clause 45, ought to be considered. I now direct the Clerk to circulate the Memorandum from H.E. the President to all Members so that you familiarize yourselves with its contents.

I thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Thursday, October 17, 2019

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE FINANCE BILL, 2019

DATE: 24TH OCTOBER, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	