



No. 14 of 2018.

Public Finances (Management)(Amendment) Act 2018.

Certified on : 26 NOV 2018



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Public Finances (Management)(Amendment) Act 2018.

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No. 14 of 2018.

AN ACT

entitled

Public Finances (Management)(Amendment) Act 2018,

Being an Act to amend the ***Public Finances (Management) Act 1995*** to remove the management of national procurement (including those relating to Provincial Governments and Local-level Governments as required by the ***Organic Law on Provincial Governments and Local-level Governments***, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C. (***qualified rights***) of the ***Constitution***, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy conferred by Section 49; and
- (f) the right of reasonable access to official documents conferred by Section 51; and
- (g) the right of freedom of movement conferred by Section 52,

is a law that is made under Section 38 of the ***Constitution***, taking into account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 53(2) of the ***Constitution***, this Act is expressed to be made in the national interest.

(3) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this Act relates to a matter of national interest.

2. INTERPRETATION OF ACTS.

A reference in this Act to this Act includes -

- (a) any regulations or lawfully made administrative arrangements made under this Act or any other Act; and
- (b) any Act that is substituted for or that replaces that other Act; and
- (c) any regulations made under any such substitute or replacement Act.

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3. ACT BINDS THE STATE.

This Act binds the State.

4. INTERPRETATION (AMENDMENT OF SECTION 2).

The Principal Act is amended in Section 2 by -

(a) adding before the definition of "approved bank", the following new definitions:

"APC Committee" means the Authority to Pre-commit Committee established by this Act; and

"Authority to Pre-commit Expenditure" means an Authority to Pre-commit Expenditure issued under this Act; and

(b) adding after the definition of "loan moneys", the following new definition:

"National Procurement Commission" means the National Procurement Commission established by the *National Procurement Act 2018*.

5. REPEAL AND REPLACEMENT OF SECTION 32.

Section 32 of the Principal Act is repealed and replaced with the following new section:

"32. APPROVAL OF REQUISITIONS.

(1) A Departmental Head may, by notice in writing, appoint officers to approve requisitions for the expenditure of moneys in that Department in accordance with a warrant authority.

(2) A Departmental Head may, by notice in writing, appoint officers as financial delegates to approve expenditures, subject to the verified availability of funds for that expenditure.

(3) A notice under this section -

(a) may be subject to such terms and conditions as the Departmental Head thinks fit; and

(b) shall be published in the National Gazette."

6. REPEAL AND REPLACEMENT OF PART VII.

Part VII of the Principal Act is repealed and replaced with the following new part:

"PART VII. - PROCUREMENT REGULATION AND COORDINATION.

39. ESTABLISHMENT OF APC COMMITTEE.

(1) The Treasury Departmental Head, Finance Departmental Head and the National Planning Departmental Head, or their respective delegates, collectively form the APC Committee.

(2) The APC Committee is neither a public or statutory body, as defined by this Act.

(3) The Chairman of the APC Committee is the Treasury Departmental Head.

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- (4) At each meeting of the APC Committee, the members of the APC Committee shall appoint one of the Committee members to be the Chairman of that meeting and for no other purpose, if the Chairman is absent from that meeting.
- (5) At a meeting of the Committee -
- (a) matters arising shall be decided by a majority of the votes of the members present; and
 - (b) the person presiding as Chairperson has a deliberative, and in the event of an equality of votes on any matter, also a casting vote; and
 - (c) the quorum shall be two members of whom one shall be the Finance Departmental Head; and
 - (d) the procedures of the meeting are as determined by the Committee.
- (6) Meetings of the Committee shall be held at a minimum of twice every calendar month or on such more frequent basis as the Committee thinks fit.

40. APC COMMITTEE POWERS AND FUNCTIONS.

- (1) Subject to this Part, the functions of the APC Committee are -
- (a) approval of all procurement plans of all public and statutory bodies created after the passage of the National Budget, including prioritisation, timing, oversight and expenditure allocation, based on available cash resources; and
 - (b) alignment of available cash resources, Authorities to Pre-commit and warrants under this Act with the National Budget, to ensure that all warrants issued under this Act are fully backed by identified cash resources; and
 - (c) regulate the National Procurement Commission, to ensure that procurements authorised to commence by the APC Committee are carried out in a timely and efficient manner, in line with the APC Committee certifications; and
 - (d) monitor, enforce and report on compliance of the National Procurement Commission and public and statutory bodies with the standards set for public procurement, including the contract management of all procurements.
- (2) At each meeting of the APC Committee -
- (a) the Finance Departmental Head shall identify the amount of available funds to meet procurements that have had appropriations made in respect of them in the National Budget, the procurements for which are within the jurisdiction of the Commission; and
 - (b) the Treasury Departmental Head and the National Planning Departmental Head shall allocate the funds identified in Paragraph (a) to meet the costs of procurements that have had appropriations made in respect of them in the National Budget, the procurements for which are within the jurisdiction of the Commission; and
 - (c) the APC Committee shall certify the allocations made pursuant to Paragraph (b) and notify the Commission and the relevant public or statutory body accordingly; and
 - (d) receive and consider reports from the Secretariat.

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(3) An allocation pursuant to this section shall only be made if the public or statutory body has documented and completed, prior to the meeting of the APC Committee, all requirements necessary to facilitate immediate procurement.

(4) No warrant under this Act shall be issued in respect of any procurement within the jurisdiction of the Commission other than in compliance with a certification of allocation under this section, and any warrant purportedly issued in contravention of this section is void.

(5) Subject to this section, all payments for all procurements within the jurisdiction of the Commission shall be processed and paid only with the written agreement of the Department of Finance.

(6) Subsection (5) shall not apply to -

- (a) Provincial Governments or Local-level Governments established under the *Organic Law on Provincial Governments and Local-level Governments* in respect of funds used by them for the payment for procurements when the funds were in the General Revenue Fund established for that Provincial Government or Local-level Government; or
- (b) District Development Authorities established under the *District Development Authorities Act 2014* in respect of funds used by them for the payment for procurements when the funds were in the possession, power or control of a District Development Authority.

41. APC COMMITTEE SECRETARIAT.

(1) The Finance Departmental Head shall appoint, from within his department, such staff as are, in his opinion, necessary to form the Secretariat for the APC Committee.

(2) Members of the Secretariat shall attend all meetings of the APC Committee to provide secretarial assistance to the APC Committee.

(3) The functions of the Secretariat are -

- (a) to keep accurate minutes of all APC Committee meetings; and
- (b) to report to the APC Committee at each of its meetings, the follow-up on all decisions taken by the Committee at prior meetings; and
- (c) to keep accurate records of all procurement plans received and approved by the APC Committee pursuant to this Act; and
- (d) to keep accurate records of all Authorities to Pre-commit Expenditure issued by the APC Committee; and
- (e) to keep accurate records of all procurements certified by the APC Committee as having available cash resources to proceed; and
- (f) to report to the APC Committee at each meeting on the operations of the Commission to ensure that procurements authorised to commence by the APC Committee are carried out in a timely and efficient manner, in line with the APC Committee certifications; and
- (g) to report to the APC Committee at each meeting on the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices in all procurements by the Commission; and

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- (h) to report to the APC Committee at each meeting on compliance of the Commission and public and statutory bodies with the standards set for public procurement, including the contract management of all procurements; and
- (i) at the direction of the APC Committee, institute and oversee procurement, contract and performance audits as may be required by the Committee.

42. AUTHORITY TO PRE-COMMIT EXPENDITURE.

(1) The APC Committee may issue to a Departmental Head an Authority to Pre-commit Expenditure under this Act in relation to the procurement of goods, works or services where the APC Committee is satisfied that -

- (a) in the case of proposed expenditure exceeding the threshold limit established by the *National Procurement Act 2018* -
 - (i) the provisions of this part have been complied with in relation to the procurement; and
 - (ii) funds will be available to meet the proposed schedule of payments for the procurement; and
- (b) in the case of proposed expenditure not exceeding the threshold limit established by the *National Procurement Act 2018*, the circumstances of the proposed expenditure are such that it is appropriate to authorise the Departmental Head to whom the Authority to Pre-commit Expenditure is to be issued, to enter into a contract for the procurement of goods, works or services notwithstanding that the full amount of funds to meet the payment required under the contract is not immediately available.

- (2) An Authority to Pre-commit Expenditure under Subsection (1) shall specify -
- (a) the procurement of goods, works or services to which it relates; and
 - (b) the maximum amount to which the Authority extends.

(3) An Authority to Pre-commit Expenditure under Subsection (1) authorises the Department, to whose Departmental Head the Authority was issued, to enter into a contract for the procurement of goods, works or services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority and in any event not exceeding the threshold limit established by the *National Procurement Act 2018* for that Department.

(4) An Authority to Pre-commit Expenditure under Subsection (1) authorises National Procurement Commission and such other bodies as are authorised by the *National Procurement Act 2018* to enter into a contract for the procurement of goods, works or services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.

(5) An Authority to Pre-commit Expenditure under Subsection (1) shall not exceed the appropriation contained in the National Budget for the procurement of goods, works or services for the financial year in which the Authority was issued.

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43. CONTRACTS TO BE EXECUTED IN MULTIPLE YEARS.

(1) Subject to this section, where the APC Committee considers, based on reasonable evidence presented to it, that a contract for the procurement of goods, works or services is to be executed in or over multiple financial years, the APC Committee may issue an Authority to Pre-commit Expenditure under Section 42(1) to enter into a contract for the procurement of goods, works or services specified in the Authority for multiple financial years.

(2) A contract entered into under or as a consequence of the issue of a multi-year Authority to Pre-commit Expenditure issued by the APC Committee under this section is conditional, in all financial years after the financial year in respect of which it was executed, on Parliament making sufficient appropriations in the National Budget to meet the undischarged obligations of the contract in each of the fiscal years in respect of which contractual obligations would, if executed, fall due.

(3) Subject to Subsection (4), the valuable consideration of a contract entered into under or as a consequence of the issue of a multi-year Authority to Pre-commit Expenditure issued by the APC Committee under this section shall not exceed the appropriation contained in the National Budget for the procurement of those goods, works or services for the financial year in which the Authority was issued.

(4) The valuable consideration of a contract entered into under or as a consequence of the issue of a multi-year Authority to Pre-commit Expenditure issued by the APC Committee under this section may exceed the appropriation contained in the National Budget for the procurement of those goods, works or services for the financial year in which the Authority was issued, provided that the Treasury Departmental Head has certified in writing to the APC Committee that, as Treasury Departmental Head, he intends to ensure that in the preparation of the National Budget for submission to Parliament in all relevant financial years that appropriation proposals have been included that will, if so legislated by Parliament in the relevant financial years, be sufficient appropriation for that part of the contract that exceeds the current financial year appropriation and which falls to be executed in the following financial years.

(5) An Authority to Pre-commit Expenditure issued under Subsection (1) is not an appropriation.

(6) The Chairman of the APC Committee, as Treasury Departmental Head, shall ensure that in the preparation of the National Budget for submission to Parliament that all Authorities to Pre-commit Expenditure issued for multiple financial years by the APC Committee that appropriation proposals have been included that will, if so legislated by Parliament, be sufficient appropriations for that part of the contracts that are to be executed in the following financial years.

(7) The Chairman of the APC Committee shall report to the APC Committee on the appropriation proposals that he has caused to be proposed for inclusion as appropriations in the National Budget.

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(8) If the National Budget does not, in respect of any financial year, contain sufficient appropriations for that part of contracts that are to be executed in the following financial years in respect of which Authorities to Pre-commit Expenditure have been issued under Subsection (1), the contracts that have not been so appropriated shall be, by virtue of this section, cancelled as at the end of the financial year for which there is appropriation in the National Budget.

(9) No compensation, damages or other relief shall be awarded by any court of competent jurisdiction for any contract cancelled by this section in respect of any loss or damage caused by that cancellation.

44. CERTAIN CONTRACTS NULL AND VOID.

(1) In this section -

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under Section 42;

“Integrated Local Purchase Order and Claim (ILPOC)” means an Integrated Local Purchase Order and Claim issued in accordance with the Financial Instructions.

(2) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the State, in respect of which purchase or supply -

(a) in the case of proposed expenditure exceeding K100,000.00, the provisions of this part have not been complied with in relation to the purchase or supply; or

(b) in the case of proposed expenditure not exceeding K100,000.00, no Authority to Pre-Commit Expenditure has been granted or no Integrated Local Purchase Order and Claim has been issued,

is of no legal effect.

(3) The provisions of this section apply in respect of contracts entered into, or purported to have been entered into, by or on behalf of the State, on or after 1 January 2003.

45. CLAIM AGAINST THE STATE NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

(1) In this section -

“Integrated Local Purchase Order or Claim (ILPOC)” means an Integrated Local Purchase Order or Claim issued in accordance with a Financial Instruction.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the State shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces -

(a) a properly authorised Integrated Local Purchase Order or Claim (ILPOC); or

(b) an Authority to Pre-commit Expenditure,

relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

(3) The provisions of this section apply where the property or stores were purportedly sold to the State or the goods or services were purportedly supplied to the State on or after 1 January 2003.”.

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7. REPEAL OF SECTIONS 46, 47, 47A, 47B, 47C, 47D AND 47E.

Sections 46, 47, 47A, 47B, 47C, 47D and 47E of the Principal Act are repealed.

8. TRANSFER OF ASSETS.

All property, except that property that the Finance Minister may determine, which immediately before the commencement of this Act was vested by the Government for the use of or was the property of the Central Supply and Tenders Board, any Provincial or District Supply and Tenders Board or specialised Tenders Board on the date of the commencement of this Act shall immediately vest in the National Procurement Commission subject to all interests, liabilities, charges, obligations and trusts affecting that property.

9. ACTIONS, ETC., NOT TO ABATE.

(1) All acts, matters or things done or suffered or deemed to have been done or suffered or taken, or procedural steps taken under or for the purposes of a provision having effect immediately before the coming into operation of this Act, shall, after that coming into operation, be deemed to have been done or suffered or taken under, or for the purpose of, this Act.

(2) All legal obligations, proceedings and claims pending in respect of the Central Supply and Tenders Board, any Provincial or District Supply and Tenders Board or specialised Tenders Board shall be continued or enforced by or against the National Procurement Commission in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.

10. TRANSITIONAL PROVISIONS.

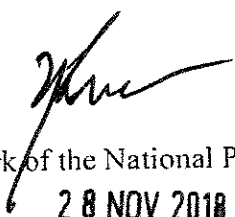
(1) An Authority to Pre-commit Expenditure issued under any law in force immediately prior to the commencement of this Act shall be deemed to be an Authority to Pre-commit Expenditure issued under this Act.

(2) Until advised by, and subject to the conditions imposed by or the instructions issued by the APC Committee and its Secretariat, the staff of the former Central Supply and Tenders Board shall be appointed by the APC Committee and its Secretariat to perform staff functions for the National Procurement Commission.

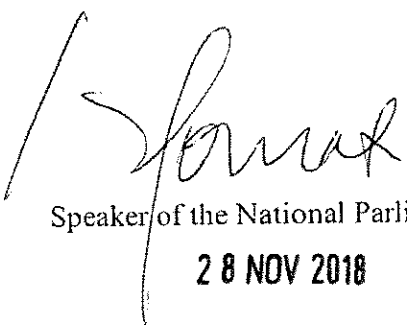
(3) Except as provided for under this Act, this Act shall take precedence over all other enactments regulating procurement.

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I hereby certify that the above is a fair print of the *Public Finances (Management)(Amendment) Act 2018*, which has been made by the National Parliament.


Clerk of the National Parliament.
28 NOV 2018

I hereby certify that the *Public Finances (Management)(Amendment) Act 2018*, was made by the National Parliament on 12 September 2018.


Speaker of the National Parliament.
28 NOV 2018