

THE DEVELOPMENT OF THE COMMODITIES FUND BILL .

Background.

Commodities Fund (ComFund) is a Government Agency established under Section 9 (1) of the Crops Act No. 16 of 2013. It is the successor of the Coffee Development Fund and Sugar Development Fund which ceased operation following the enactment of the Crops Act 2013.

The Fund came into operation on 1st August 2014. It funds the scheduled crops mentioned under the 1st Schedule of the Crops Act 2013 namely Coffee; Tea; Sugarcane; Horticulture; Food crops; Nuts and oils; Fibre (sisal and cotton); Pyrethrum and other industrial crops. The Fund beneficiaries include individual coffee farmers, farmers' co-operative societies, estate growers, entrepreneurs in coffee value addition and Sacco's. It has two lending models namely agency and direct.

The Fund set out to develop its Commodities Fund bill in order to allow for sound legislative backing of its existence and operations with the ongoing changes in the agricultural sector and weak legal background among the driving force.

It is important to note that the difference between Commodities Fund and other agricultural lending organizations is the low interest rates on loans advanced by the Fund. This has worked to ensure sectorial growth and improve the value chain of commodities and in turn aid the Government in realizing its progressive agenda.

The development of the ComFund bill involved a conglomerate of legal stake holders drawn from relevant arms of government which included:

- i. The Ministry of agriculture, livestock, fisheries and co-operatives.
- ii. The Agriculture and Food Authority.
- iii. The Attorney General's office.
- iv. Kenya law reform.
- v. National council for law reporting.
- vi. Council of governors.
- vii. Commodities Fund.

CHALLENGES LEADING TO DEVELOPMENT OF THE LEGISLATIONS/BILL.

Various background challenges were highlighted leading to the need for the development of the legislation. This included;

- Huge gaps in the parent Act (*Crops Act 2013 as amended in 2016*) which have severely affected the Funds ability to grow and function optimally.

- Proposed amendments by the Commodities Fund aimed at addressing the ever present corporate status issue have failed to take off years since the inception of the Crops Act.
- Weak regulatory framework leading to a lack of regulations for the better implementation of the law as developed.
- The Fund's sources of financing including the scope and mandate under the Crops Act have been limited thereby stifling the realization of a fully operational Fund.
- Policy changes and proposed reforms in agricultural sector through development of legislations to realise the re-emergence of the various authorities i.e., tea, coffee and sugar, food crops, nut and oils bill have raised questions over the duplicity of roles meant for the Fund under the proposed authorities.
- The Lack of autonomy and independence leading to stagnation in the undertaking of various duties and tasks including security perfection, liquidation of securities and internal human resource administration hitches including categorization.

SNAPSHOT OF THE COMMODITIES FUND BILL, 2021.

The Bill seeks to address certain gaps, emanating from the Crops Act, 2013 this include:

a) Corporate status of the Fund.

Since inception the Fund, has operated without a corporate status. This has impaired operations significantly thereby restricting sustainable operations. The bill in an attempt to cure this has declared the Fund a body corporate capable of discharging all functions lawfully required of a body corporate.

b) Source of Funds

There is need to **review and ascertain the sources of finances** to the Fund. This is a need borne out of the dissolution of the Levies by the executive, non-realization of funds as elucidated under the Crops Act 2013 plus the need to adhere to the Constitution 2010 on devolved functions where license fees were surrendered to the county.

The Bill seeks to introduce multiple sources of funding by expressly providing for apportionment of levies to the Fund from the scheduled crops, funds appropriated by Parliament, grants, investments and any other lawful source.

c) Mandate of the Fund

The Fund's mandate was not clear under the Parent Act and there was need for legislative clarity for the Fund to fully perform its mandate. Therefore, it was necessary for the Bill

to widen the scope to cover not only farmers but also other value chain players in the sector.

d) Administration and management of the Fund

That there were gaps envisaged in the Crops Act with regards to membership of the Board, tenure of the Board of trustees, appointment and tenure of the Managing Trustee and transition of staff from sugar and coffee funds.

The bill clearly has adhered to the Mwongozo code of conduct pertaining to membership of the Board of trustees, appointment of the Managing Trustee and their tenures thereof.

Furthermore the Bill permits the Fund to recruit on a need basis staff for the proper discharge of its function.

e) Transition and repeal

That there was need to have clear policy on handover between Commodities Fund and former institutions to ensure smooth running of the funds activities.

f) Schedule of crops targeted.

The bill included the various crops targeted for affordable financing in a bid to ensure the sector is revitalized and aptly financed through viable advances.

g) Mode of Fund financing.

The bill seeks to rationalize the source of funds to advance to the scheduled crop sub sector. This seeks to expand and improve the source in a bid to ensure

Before embarking on the drafting of the Bill the Fund sought to establish if;

- i. There would be any relevance in the Fund considering that each crop come up/ was coming up with individual laws to regulate their respective sub-sector
- ii. The Fund would/is relevant, how best to anchor the Fund? The mandate of the Fund, membership to the management of the Fund and the roles of the county Governments
- iii. Further to (ii) above, what aspect of funding the Commodities Fund would support different from those supported by the independent funds.

- iv. Funding for other commodities other than Coffee and sugar had been conceptualized considering the weak funding model in the sector currently.

RECOMMENDATIONS AND WAY FORWARD.

There is need to consolidate all funds for scheduled crops under the Commodities Fund and repeal all sections establishing other funds thus far.

The Public Finance Management Act, 2012 under 24(5) (c) denotes that all documents establishing funds will be known as regulations under the Public Finance Management Act and not stand alone act. This therefore translates that the document that the document will be known as "the Public Finance Management Act- Commodities Fund Regulations."