President Uhuru Kenyatta refuses to assent to the Finance Bill 2019

Background to the interest rate capping debate

- Interest rate caps on commercial bank loans and deposits were introduced in September 2016 through the Finance Bill 2016 that provided that the maximum rate allowable rate charged by banks on loans at not more than 4% above the Central Bank Rate (CBR) and a minimum of 70% of the CBR.
- Data from the Central Bank of Kenya (CBK) shows that private sector growth has remained comparatively low whilst commercial bank demand for government debt has increased since caps were introduced.
- Over the same period, asset quality has deteriorated significantly with the banking sector's average Non Performing Loan (NPLs) at 12.4% (July 2019).
- In October 2018, interest rate floors were abolished but lending rate caps were retained.
- In March 2019, the High Court of Kenya ruled that the section capping lending rates was unconstitutional but suspended the ruling for 12 months during which amendments were to be made by the lawmakers.
- In response to the ruling, amendments to the law were made by lawmakers and the Finance Bill 2019 was passed by the National Assembly in September 2019.
- On 16th October, the president rejected the Bill proposing the repeal of the section capping lending rates.

What does the Kenyan constitution say about the enactment of a Bill?

(1) Within fourteen days after receipt of a Bill, the President shall –

(a) Assent to the Bill; or

(b) Refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

- The president opted for (b) above.

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part -

(a) Amend the Bill in light of the President's reservations;
or
(b) pass the Bill a second time without amendment.

(3) If Parliament amended the Bill fully accommodating the President's reservations, the appropriate Speaker shall re-submit it to the President for assent.

(4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported

(a) by two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

(5) If Parliament has passed a Bill under clause (4)-

(a) the appropriate Speaker shall within seven days re-submit it to the President; and

(b) the President shall within seven days assent to the Bill.

(6) If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under (5) (b), the Bill shall be taken to have been assented to on the expiry of that period.

Source: Kenya Law Reform Commission

In this case the president has chosen to evoke clause 2 below:

(a) Amend the Bill in light of the President's reservations;

- This is the first time that the president has out rightly declared his position on interest rate caps and acknowledged that the caps have had an adverse impact on private sector credit growth and the overall performance of the economy.
- It is assumed that the executive is under pressure from financiers including the International Monetary Fund (IMF) to do away with interest rate caps for various reasons including spurring on economic activity of tapping into a standby credit facility.
- The president's party Jubilee has a majority of MPs and successful lobbying by close associate of the president means that there is a potentially high chance that MPs will repeal the clause on interest rates and pass the Bill.

(b) Pass the Bill a second time without amendment.

- Kenyan Members of parliament have been in the past accused of protecting their own interests at the expense of the general public as seen in the case of remuneration and review of personal benefits.
- This could be another case where their interests as borrowers would come ahead of the interests of a business community facing low credit access.
- This could result in the rejection of the president's amendments and passing the Bill as is.

Parliament also has the option of making amendments to the Bill that do not fully accommodate the President's reservations and passing it with a two-thirds majority vote.

Could a compromise be reached?

- We take you back to the controversial Bill that sought to introduce 16% Value Added Tax (VAT) on fuel products in September 2018.
- A compromise was reached albeit chaotic with the VAT being slashed to 8% shelved to 2020.
- There is a possibility that this scenario might play out once again and a compromise reached that would make all parties including the MPs, government, SME borrowers and banks happy.
- This being a slight upward revision to the lending rate (possibility being 6 - 8% above CBR.

We will monitor developments on the Finance Bill 2019 and keep you informed.