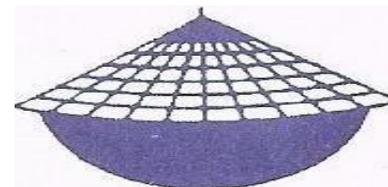




REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

**TEMPLATE FOR RECEIVING COMMENTS ON PROPOSED NATIONAL RATING
BILL, 2021**



SYAGGA AND ASSOCIATES LIMITED
RESEARCH AND DEVELOPMENT CONSULTANTS



TEMPLATE FOR RECEIVING COMMENTS ON PROPOSED RATING BILL

INSTITUTION	FSD Kenya ¹
GENERAL COMMENTS	<p>Overall Positive Comments on the Bill</p> <ul style="list-style-type: none"> a) It seeks to harmonise legislation relating to property taxes by bringing together the Rating Act and the Valuation for Rating Act into one law b) Helps provide guidance to county governments in preparing their respective rating legislation in their capacities as rating authorities and thus ensure proper planning and harmonisation across the country-section 3 and 4. c) Helps update the rating laws to conform the Constitution 2010 now that the particular laws were old and modelled on the former local authorities (municipal and county councils) being the rating authorities. d) Promotes the adoption of technology in conducting valuations for purposes of rating as well as rating itself- e.g Section 6 of the Bill provides that rating authority (county governments) shall identify or create an appropriate technological system for preparation and implementation of the roll. <p><u>Issues that still need addressing in the Bill</u></p> <p>There is need for digital platform which integrates delivery and payment for various government services including Property Rates, but also for other county functions like water, sewerage, county approvals etc. Also, this digital platform should be integrated with National Platform for land transactions (even if only a view function) so that land transactions are effectively and accurately registered, and previous owners are not constantly issued rating invoices by different authorities/agencies.</p>

¹ The Financial Sector Deepening Kenya (FSD Kenya) is an independent trust dedicated to the achievement of an inclusive financial system that supports Kenya’s long-term development goals.



The Bill should provide that the National Government will support with provision of a baseline for guidelines say through the office of the Chief Government Valuer given the lack of capacity on part of many county governments and the potential for having differential and varying rating processes.

Relatedly, there is need for issuance of guidelines guiding which properties would be exempt from rates or enjoy waivers, discounts, standardization, harmonization preferably at the same time that the stakeholder engagement for this Rating Bill is ongoing to ensure quick operationalisation. It appears a convoluted process to have 47 counties prepare their own guidelines and it would be more efficient if they were to adapt and adopt a baseline guideline. This will also obviate delays or non-implementation as has occurred with regard to stamp duty exemption for first time home buyers on account of lack of implementing regulations/guidelines.

There is need to show/have comparables /comparators for determining value adopted for purposes of assessing property rates.

There is need for a provision in the Bill linking assessment and payment of rates to provision of essential services by rating authorities (county governments) such as sewerage, water, sanitation etc. This will ensure taxation with adequate representation-and ensure value for the taxation (rates) as well as promote accountability.

Not all assessed taxes are collected, calling for devising of mechanisms for collection of assessed taxes as well as a general improvement of processes of tax collection including by linking properties assessed, receipts and cost of collection so as to eliminate informal tax payments.

Need to incentivize tax payments and punish non-compliance through fines, tax liens and foreclosures.

It is critical to develop a framework for incorporating environmental services in tax assessment.

Land tax authorities should put in place mechanisms for assessing the cost of collection vis a vis the tax collected to gauge value for money.



	There are a low number of properties that are currently assessed for taxation (only about 50%), which calls for complete coverage of all rateable properties and taxable land transactions as well as devising of enforcement mechanisms to pursue tax evaders.		
Section	Comments	Recommendation	Rationale for the Recommendation
PART ONE-PRELIMINARY			
1. Short title and commencement.	The title of the Bill as the “National Rating Bill 2021” appears somewhat a misnomer given that it is applicable to county governments in their capacity as rating authorities (even though the Bill is being crafted at the national level to guide the various county governments.	We recommend the title “Rating Bill 2021”	This would not lend to the potential confusion and would be consistent with the current law, the Rating Act, Cap 267
2. Interpretation			
3. Objects of this Act.			
4. Guiding Principles	The process of assessment of land values has been unclear to the affected thereby necessitating a clear	Section 4(2) e & f of the Bill now provide for the need for rating authorities to have a fair, reasonable and just criteria for determining the different rates to apply and different categories of properties for	These changes were informed by the need to improve administration of the system of land valuation in terms of



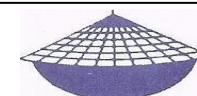
	<p>mechanism for the same which is properly communicated; as well as need to digitize the fiscal cadastre and development of capacity for its management.</p> <p>There have also been unjustified and non-transparent exemptions to payment of property taxes which require minimization of opportunities for discretionary tax exemptions to reduce associated corruption.</p>	<p>purposes of rating, increasing tax rates, issuing exemptions to rating etc.</p> <p>Section 4(2) e (i) and (iii) and f(ii) of the Bill now provide for the need for rating authorities to have a fair, reasonable and just criteria for determining identifying exemptions for certain rateable owners and rateable properties from payment of rates; and circumstances applicable when considering interest on defaulters, discount, remission and waiver; and for the rateable property to be exempted.</p> <p>However, this section should require rating authorities to publish the methodology used to derive at valuations and list of properties exempt from rates and why.</p> <p>There also needs to be a clear responsibility on rating authorities to show how they have used the rates in fulfilment of 4 (2) (i). The rating authority should be required to publish detailed accounts which are publicly available, clearly showing cost of county personnel for different purposes, and investment in delivery of services – again with sufficient granularity of detail.</p>	<p>enhancing coverage of properties; enhancing assessment, collection and enforcement.</p>
<p>5. Application of this Act.</p>			



6. Use of technology.	This is important to make operations more effective. There was need to promote the adoption of technology in conducting valuations for purposes of rating as well as rating itself.	Section 6 of the Bill provides that rating authority (county governments) shall identify or create an appropriate technological system for preparation and implementation of the roll. This is commendable. Further, Counties should be encouraged to use the same technological platform for collecting rates, as for collection of other services (water, sewage, planning fees, licencing etc). Further, national governments and their devolved offices should be encouraged to use the same system for recording transfer of title ownership.	This will ensure harmonization of all land-related functions.
PART TWO-RATING			
7. Duty to levy rates.			
8. Rateable owner.	Section 8(1) f of the Bill considers an occupier of a rateable property who under section 8(2) has an obligation to pay rates when they fall due as well as provide accurate and sufficient information on the rateable property for purposes of valuation upon request, an occupier may neither be a legal nor beneficial owner and thus	There may be need to change the definition of a rateable owner not to include an “occupier”, or rather change the definition of “occupier” within the context of this provision to exclude tenants who should reasonably not be liable to pay rates whenever property owners cannot be found.	While an ‘occupier’ is considered a rateable owner and therefore liable to pay rates where the legal owner cannot be found particularly in case of absentee landlords, the same may be amenable to abuse and unduly burdensome to tenants particularly in low income areas largely dominated by absentee



	have no identifiable interest beyond occupying the property.		landlords especially in slums/informal settlements.
9. Forms of Rating.	The rating based on site value rate including improvements made thereon, while useful in increasing own revenues for county governments, may work to disincentivize developments/improvements on land on the part of landowners. Evaluating improvements requires a great amount of time and on the ground data.	Consider removing rating improvements on land or better still adopt a hybrid mechanism where rating on improvements is done on highly developed areas such as concentrated urban centres, with the rating on improvements not levied on other undeveloped areas to spur developments. For areas where improvements are included into rateable value, there needs to be adequate guidelines on how this is derived, as it is a very time consuming exercise to evaluate each property's improvements, and can be subject to abuse. Due to the need to spur development that will in turn promote economic activity.	Allowing a rating roll to include improvements can lead to significant errors based on using subjective judgements by a county government as there is inadequate time and resources to evaluate the improvements accurately. It would be more equitable for the county to raise additional revenue from developed properties from the additional services consumed (eg. additional water, sewer charges).
10. Notice of Rating.	Though the current law is clear on the process of fixing and revising valuations, members of the public are not fully sensitized and empowered to engage in the process.	Section 10 of the Bill now provides an elaborate process including a 21 day notice to be issued by a rating authority inviting members of the public to discuss the process and mode of adopting rating methods and rates in an area and offering the public the opportunity to make objections/seek clarifications. This is commendable.	Should be retained.
11. Annual rental value.	There have been concerns and allegations that some	Section 11 of the Bill now provides that a Valuer must consider the annual rental value rate when	Retain the provision.



	Valuers are influenced to lower the values of property to reduce the amount of tax payable.	determining the rate applicable in a particular rating jurisdiction as well as the categorization of property whether commercial, residential, agricultural or other-this will help mitigate the earlier instances of arbitrariness in valuation or rigging valuation.	
12. Setting of rate struck.			
13. Notice of rate.			
14. Payment of rates.			
15. Remission of rates.			
16. Discounts and waivers.			
17. Enforcement of payment of rates.	While there are a variety of options under the Rating Act, County Authorities have taken a largely passive role in enforcement, relying almost exclusively on the rate clearance certificates yet the clearance certificate option relies on taxpayer initiative to clear outstanding debt. Accordingly, this option is only effective when the property is being transferred	Section 17 of the Bill now provide for various penalties/enforcement methods including: denial of certain County services, levying a penalty, suit against defaulter, appointment of receiver over the property, applying to be a beneficiary, and auction-where one is in default of paying rates after a demand has been issued to them.	Retain the provisions



	or when the local business license or permit is being requested from the County Government.		
18. Recovery of rates.	While there are a variety of options under the Rating Act, County Authorities have taken a largely passive role in enforcement, relying almost exclusively on the rate clearance certificates yet the clearance certificate option relies on taxpayer initiative to clear outstanding debt. Accordingly, this option is only effective when the property is being transferred or when the local business license or permit is being requested from the County Government.	Section 18 of the Bill now provide for various penalties/enforcement methods including: denial of certain County services, levying a penalty, suit against defaulter, appointment of receiver over the property, applying to be a beneficiary, and auction-where one is in default of paying rates after a demand has been issued to them.	Retain the provisions
19. Contribution in lieu of			
rates.			
PART THREE-APPOINTMENT AND POWER OF VALUERS			



20. Criteria to be a valuer.	Most County Governments rely on the Ministry of Lands for production of the valuation rolls, with only a few using private sector Valuers	Under section 20 of the Bill, it appears that the county governments will be at liberty to appoint a valuer so long as they have 7 years' experience and are registered with the Valuers Registration Board which means there is now room for use of private sector valuers.	Should be retained
21. Appointment of valuer.	Most County Governments rely on the Ministry of Lands for production of the valuation rolls, with only a few using private sector Valuers	Under section 21 of the Bill, it appears that the county governments will be at liberty to appoint a valuer so long as they have 7 years' experience and are registered with the Valuers Registration Board which means there is now room for use of private sector valuers.	Should be retained
22. Responsibilities of a valuer.	There have been concerns and allegations that some Valuers are influenced to lower the values of property to reduce the amount of tax payable.	Section 22(1)e of the Bill now provides that a Valuer once appointed by a rating authority must provide a conclusive well documented basis of their valuation report accompanied by the maps and plans and any other documentation to the rating authority.	Retain the provision
23. Powers of a valuer.			
24. Chief Government valuer.	Most County Governments rely on the Ministry of Lands for production of the valuation rolls, with only a few using private sector Valuers.	Section 24 of the Bill still retains provision for county governments to request the Chief Government Valuer of the national government to undertake valuation on their behalf despite provision for private valuers. This provision is proper due to capacity issues on part of some county governments	Retain the provision as it is necessary to deal with capacity issues at the county level.



PART IV- VALUATION FOR RATING

<p>25. General basis for valuation.</p>	<p>Valuation is based on clear principles as prescribed by International Valuation Standards Council and Institution of Surveyors of Kenya Handbook which uses Income approach, Cost approach and the Sales Comparison approach which may not reflect the actual values for some land such as range lands (pastoral areas). This is still retained under section 25(2) of the Bill which provides that in arriving at the value of land under this section, the valuer may adopt any suitable method of valuation that conforms to the Kenya valuation standards and international valuation standards.</p> <p>Section 27(1) of the Bill also incorporates those approaches.</p>	<p>Need for this section to incorporate other approaches that help capture values of all lands irrespective of the area as a basis for valuation.</p>	
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26. Declaration of rateable areas.			
27. Methods of valuation.			
28. Preparation of valuation rolls and supplementary valuation rolls.	There have been outdated valuation rolls which needed updating and proper maintenance.	Section 28 of the Bill now provides that the rating authority shall ensure the preparation and implementation of a valuation roll every five years with a possible extension of 2 more years.	This is commendable and should be retained.
29. Alterations of the valuation rolls and supplementary valuation rolls.	There have been outdated valuation rolls which needed updating and proper maintenance.	There is provision for preparation of Supplementary Valuation Rolls under section 29(2) of the Bill but only based on the main valuation roll, with only clerical errors allowed in altering valuation rolls.	Retain the provision
30. Contents of the draft valuation rolls and draft supplementary valuation rolls. 31. Deposit of draft valuation rolls and draft supplementary valuation rolls.			



32. Publication of roll.	The valuation rolls have not been accessible or available necessitating clear provisions on public accessibility of valuation rolls and the mode and media for storage and accessibility.	Section 24(4) of the Bill now charges the Chief Government Valuer with managing a database for the collection and collation of all prepared valuation rolls from the rating authority, which means that the same may now be publicly available/accessible to the public. Section 32 also allows for inspection of the draft valuation roll by members of the public.	Retain the provisions.
33. Objections.			
34. Uncontested draft valuation rolls and draft supplementary valuation rolls.			
35. Exemptions.	There have been unjustified and non-transparent exemptions to payment of property taxes which require minimization of opportunities for discretionary tax exemptions to reduce associated corruption	Section 35 of the Bill provides for a list of exempted properties that are used for a public purpose. Section 4 on guiding principles requires a fair and just criteria for allowing exemptions. Consider providing that the Cabinet Secretary or Chief Government Valuer or National Land Commission will prepare guidelines on the exempt properties to clarify more and avoid arbitrariness	

PART V- NATIONAL RATING TRIBUNAL



36. Establishment of a National Rating Tribunal.			
37. Mandate of the Tribunal.			
38. Members of the Tribunal.	Should consider including KEPSA or KPDA for private sector involvement in the membership of the National Rating Tribunal since representation by Chambers of Commerce may not be adequate.	Include representation from either KEPSA or KPDA (Kenya Property Developers Association to represent the interests of the private sector	The private sector constitutes a key partner given that most properties on which rates are levied belong to the private sector. KEPSA or KPDA may be best placed to represent developers/property owners.
39. Quorum.	Quorum of five members may be quite arduous to attain at any one particular time	Reduce the quorum of the Tribunal to 3 members	A high quorum number of 5 may lead to delay in determination of disputes thereby causing a backlog of disputes. 3 members are adequate since even the Court of Appeal sit as 3 judges (again it is an odd number therefore no chance of a tie).
40. Tenure.			



<p>41. Proceedings of the Tribunal.</p>	<p>Section 41(1) of the Bill gives an inordinately long time to determine objections lodged at the Tribunal of not more than 6 months</p>	<p>Reduce the period to ‘not more than 3 months’</p> <p>In addition, need for a provision requiring such a Tribunal in each county to deal with disputes falling within the particular jurisdiction</p>	<p>Not more than 6 months is an inordinately long time to determine such disputes given that this is a specialised tribunal that will only be dealing with property rates disputes. There is need to ensure quick resolution of such disputes.</p> <p>There is need for devolution of the Tribunal in each county to expedite resolution of disputes, accord with the constitutional spirit of devolution of services, and to be in line with current Valuation Courts which are being phased out.</p>
<p>42. Powers of the Tribunal.</p>			
<p>43. Remuneration of members of the Tribunal.</p> <p>44. Staff of the Tribunal.</p>			



45. Vacancy of the Tribunal.			
46. Evidence.			
47. Penalty for failure to comply with Tribunal's lawful orders.			
48. Appeals.			
PART VI-MISCELLANEOUS			
49. Notices.			
50. Repeal			
51. Regulations.			
52. Savings and Transitions.			

