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THE PUBLIC FINANCE MANAGEMENT ACT

CAP. 412A

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Public Finance Management Act

Cap. 412A

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An Act of Parliament to provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies, and for connected purposes

Part I – PRELIMINARY

1. Short title and commencement

(1) This Act shall be cited as the Public Finance Management Act.

(2) *Spent.*

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"accounting officer" means—

(a) an accounting officer of a national government entity referred to in section 67;

(b) an accounting officer of a county government entity referred to in section 148;

(c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or

(d) in the case of the Parliamentary Service Commission—

(i) the Clerk of the Senate in respect of the Senate;

(ii) the Clerk of the National Assembly in respect of the National Assembly; and

(iii) such other officer in the parliamentary service in respect of any other office in the parliamentary service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution;

"Accounting Standards Board" means the Public Sector Accounting Standards Board established under section 192;

"appropriation" means—

(a) authority granted by Parliament to pay money out of the Consolidated Fund or out of any other public fund; or

(b) authority granted by a county assembly to pay money out of the relevant County Revenue Fund or out of any other county public fund;

"appropriation Act" means an Act of Parliament or of a county assembly that provides for the provision of money to pay for the supply of services;

"authorised officer"—

(a) in relation to the National Treasury, means any of its members or officers authorised by the National Treasury in accordance with section 13; or

(b) in relation to a County Treasury, means any of its officers authorised by the County Treasury in accordance with section 105;

"borrower" means a person to whom a loan has been or is to be made;

"Budget Policy Statement", in relation to a financial year, means the Budget Policy Statement referred to in section 25;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;

"chart of account" means a structured list of accounts used to classify and record budget revenue and expenditure transactions as well as government assets and liabilities on a standard budget classifications system;

"Chief Officer" means the person appointed by the County Governor to administer the County department responsible for financial affairs;

"collector of revenue"—

(a) in relation to the national government, means a person authorised under section 76 to be a collector of revenue for the national government;

(b) in relation to a county government, means a person authorised under section 158 to be a collector of revenue for that county government;

"commitment" means entering into a contract or other binding arrangement under which expenses or liabilities may be incurred;

"Contingencies Fund" means the Contingencies Fund established by Article 208(1) of the Constitution;

"county corporation" means a public corporation within a county established by an Act of Parliament or county legislation;

"County Emergency Fund" means a Fund established under section 110;

"County Exchequer Account" means a County Exchequer Account referred to in section 109;

"County Executive Committee member for finance" means the member of a County Executive Committee responsible for the financial affairs of the County and for the County Treasury;

"County Fiscal Strategy Paper", in relation to a county government, means the County Fiscal Strategy Paper referred to in section 117;

"county government entity" means any department or agency of a county government, and any authority, body or other entity declared to be a county government entity under section 5(1);

"county government revenue" means all money derived by or on behalf of a county government from levies, rates, fees, charges or any other source authorised by the Constitution or an Act of Parliament;

"county government security" means a security issued by the county government under section 144 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the county government;

"County Debt" means all financial obligations attendant to loans raised and securities issued by the county government;

"County Treasury" means a County Treasury established under section 103;

"development expenditure" means the expenditure for the creation or renewal of assets;

"development partner" means a foreign government, an international organisation of states or any other organisation prescribed by regulations for the purpose of this Act;

"external government security" means a national government security which is issued outside Kenya;

"external loan" means any loan governed by the laws of a jurisdiction other than Kenya;

"financial objectives" means the financial objectives set out in a Budget Policy Statement of the national government or in the County Fiscal Strategy Paper of the county governments;

"financial obligation" means outstanding liabilities related to public debt, including principal, interest, fees, commissions and other expenses incidental to the raising of public debt or its repayment and shall be a charge on the Consolidated Fund or another public fund established by the national government or any of its entities;

"financial statements", in relation to a financial year or other accounting period of the national government, county government, or a national government or county government entity, means—

(a) the financial statements referred to in Part III and Part IV of this Act; and

(b) the financial statements prescribed by the Accounting Standards Board;

"fiscal responsibility principles" means the principles of public finance specified in Article 201 of the Constitution, together with—

(a) the principles of fiscal responsibility referred to in section 15, in relation to national government; and

(b) the principles of fiscal responsibility referred to in section 107, in relation to a county government;

"Government to government loan" means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial institution that acts as an intermediary between the Government and exporters to facilitate export financing, whether by means of buyer or supplier credit, credit insurance, financial intermediary loans, guarantees, Organization for Economic Cooperation and Development (OECD) tied-aid credit or officially supported export credit depending on the mandate granted to such export credit agency by the relevant government for the purpose of facilitating trade and investment between the two countries;

"Intergovernmental Budget and Economic Council" means the Council established under section 187;

"internal auditing" means an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations, which helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes;

"Islamic finance return" has the same meaning assigned to it under section 2 of the Income Tax Act;

"loan" means any borrowing with or without interest from any source or any issuance of a national government security;

"**medium enterprise**" means a firm, trade, service, industry or business activity—

(a) whose annual turnover is between five million shillings and one hundred million shillings;

(b) which employs between fifty one and two hundred and fifty employees;

(c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time and includes—

(i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed two hundred and fifty million shillings; and

(ii) the service sector and farming enterprises, where the investment in equipment or registered capital of the enterprise does not exceed one hundred and twenty-five million shillings;

"medium term" means a period of not less than three years but not more than five years;

"**micro enterprise**" has the meaning assigned to it in section 2 of the Micro and Small Enterprises Act (Cap. 499C);

"National Exchequer Account" means the National Exchequer Account referred to in section 17;

"national government entity" includes any department or agency of the national government and any authority, body or other entity declared to be a national government entity under section 4(1);

"national government revenue" means all taxes imposed by the national government under Articles 206(1)(a) and (b) and 209 of the Constitution, excluding county government revenue;

"national government security" means a security issued by the national government under section 53 or section 53A and a treasury bill, treasury bond, *Sukuk*, treasury note, government stock and any other debt instrument issued by the national government;

"National Treasury" means the National Treasury established by section 11;

"Principal Secretary", in relation to the National Treasury, means the person responsible for the administration of the National Treasury;

"public debt" has the meaning assigned to it under Article 214(2) of the Constitution;

"public money" includes—

(a) all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority; and

(b) money held by national government entities in trust for third parties and any money that can generate liability for the Government;

"publicise", in relation to a document, means to make known to the public, through the national or local media—

(a) the general nature of the document; and

(b) how and where it may be accessed and read by members of the public;

"publish", in relation to a document, includes—

(a) publishing the document in a newspaper, Government *Gazette* or other publication of general circulation in Kenya; or

(b) publication of an abridged or summary versions of the documents without loosing the core content of the document; or

(c) making the document available for reference at public libraries or offices of national government entities or in archives of those institutions; or

(d) posting the document on the internet on a Government website; or

(e) if the document relates only to a county government or any of its entities—

(i) publishing the document in a newspaper or other publication of general circulation in the County;

(ii) making the document available for reference at public libraries or offices of the county government or those entities; or

(iii) posting the document on the Internet on a county government website;

"receiver of revenue"—

(a) in relation to the National government, means a person designated to be a receiver of revenue under section 75;

(b) in relation to the county government, means a person designated to be a receiver of revenue under section 157;

"recurrent expenditure"—

(a) in relation to the national government, means the expenditure that is incurred in operating the services provided by the national government; and

(b) in relation to a county government, means the expenditure that is incurred in operating the services provided by that county government,

but does not include expenditure incurred in creating or renewing assets belonging to or managed by that government;

"regulations" means regulations made under this Act;

"short term borrowing" means borrowing by a government by way of Treasury Bills, bank-overdraft or other instrument to cover temporary cash shortfalls and is repayable within twelve months;

"**small enterprise**" has the meaning assigned to in section 2 of the Micro and Small Enterprises Act (Cap. 499C);

"*Sukuk*" means certificates of equal value, representing undivided shares in ownership of tangible or intangible assets, usufruct of assets; services or an investment activity, structured in conformity with Islamic law;

"Treasury Single Account"—

(a) in relation to the national government, means a centralised bank account system where all deposits and payment transactions are processed for State Departments, Commissions and Independent Offices, and any national government entity which draws directly from the Consolidated Fund;

(b) in relation to the county government, means a centralised bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund;

"Urban Board" means a city or municipal board within the meaning of the Urban Areas and Cities Act (Cap. 275);

"vote" means money authorised by an appropriation Act for withdrawal from the Consolidated Fund or a County Revenue Fund; and

"wasteful expenditure" means any expenditure that was incurred which could have been avoided had due care and diligence been exercised.

(2) Terms used in this Act which are also used in the Constitution have the same meaning as they have in the Constitution.

(3) For the purposes of this Act, the reference to the term 'interest' in relation to a national government security shall also apply to reference to Islamic finance return on *Sukuk*.

[Act No. 6 of 2014, s. 2, Act No. 16 of 2014, s. 39, Act No. 15 of 2017, s. 47, Act No. 12 of 2019, Sch., Act No. 16 of 2020, s. 2, Act No. 12 of 2023, s. 2.]

3. Object of this Act

The object of this Act is to ensure that—

(a) public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and

(b) public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

4. Declaration of entities as national government entities

(1) The Cabinet Secretary may, with the approval of the Cabinet and Parliament, by order in the *Gazette*, declare a state corporation, an authority or any other body whose functions fall under the national government to be a national government entity for the purposes of this Act.

(2) A declaration made under subsection (1) shall be based on criteria prescribed by regulations.

(3) The Cabinet Secretary shall, from time to time, and not less than once each year, publish in the *Gazette* a list of national entities declared under subsection (1).

(4) The Cabinet Secretary may, from time to time with the approval of the Cabinet and Parliament, by order in the *Gazette*, declare that a national government entity declared under subsection (1) shall, with effect from the date of the order, cease to be a national government entity for the purposes of this Act.

5. Declaration of entities as county government entities

(1) A County Executive Committee member for finance may, with the approval of the county executive committee and county assembly, by order in the *Gazette*, declare a county corporation, an authority or any other body whose functions fall under that county government to be a county government entity for the purposes of this Act.

(2) A declaration made under subsection (1) shall be based on criteria prescribed by regulations.

(3) A County Executive Committee member for finance shall, from time to time, and not less than once each year, publish in the *Gazette* a list of the county entities declared under subsection (1).

(4) A County Executive Committee member for finance may, from time to time with the approval of the county assembly, and by notice in the *Gazette* declare that a county government entity declared under subsection (1) shall with effect from the date of the order cease to be a county government entity for the purposes of this Act.

6. Act to prevail in certain matters

This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on the following matters—

(a) preparation and submission of budget estimates, including the time for doing so;

(b) preparation and submission of accounts for audit, including the time for doing so;

(c) borrowing, lending and loan guarantees;

(d) raising of revenue and making of expenditures;

(e) banking arrangements, including opening of bank accounts and investment of moneys;

(f) establishment and management of public funds; and

(g) establishment and dissolution of state corporations.

Part II – PARLIAMENTARY OVERSIGHT OF NATIONAL FINANCES

Responsibilities of Committees of Parliament

7. Responsibilities of the National Assembly budget committee in public finance matters

The committee of the National Assembly established to deal with budgetary matters has responsibility for the following matters, in addition to the functions set out in the Standing Orders—

(a) discuss and review the Budget Policy Statement and budget estimates and make recommendations to the National Assembly;

(b) provide general direction on budgetary matters;

(c) monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly;

(d) monitor adherence by Parliament, the Judiciary and the national government and its entities to the principles of public finance and others set out in the Constitution, and to the fiscal responsibility principles of this Act;

(e) review the Division of Revenue Bill presented to Parliament and ensure that it reflects the principles under Articles 187(2)(a), 201 and 203 of the Constitution;

(f) examine financial statements and other documents submitted to the National Assembly under Part III of this Act and make recommendations to the National Assembly for improving the management of Kenya's public finances;

(g) in accordance with Articles 114, 218 and 221 of the Constitution—

(i) make recommendations to the National Assembly on "money Bills", after taking into account the views of the Cabinet Secretary; and

(ii) table in the National Assembly a report containing the views of the Cabinet Secretary in subparagraph (i); and

(h) introduce the Appropriations Bill in the National Assembly.

8. Responsibilities of the Senate budget committee in public finance matters

(1) The Committee of the Senate established to deal with budgetary and financial matters has responsibilities for the following matters, in addition to the functions set out in the Standing Orders—

(a) present to the Senate, subject to the exceptions in the Constitution, the proposal for the basis of allocating revenue among the Counties and consider any bill dealing with county financial matters;

(b) review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with Article 218(1)(b) of the Constitution at least two months before the end of the financial year;

(c) examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make recommendations to the Senate for improving the management of government's public finances; and

(d) monitor adherence by the Senate to the principles of public finance set out in the Constitution, and to the fiscal responsibility principles of this Act.

(2) In carrying out its functions under subsection (1)(a) and (b), the Committee shall consider recommendations from the Commission on Revenue Allocation, County Executive Committee member responsible for finance, the Intergovernmental Budget and Economic Council, the public and any other interested persons or groups.

Parliamentary Budget Office

9. Parliamentary Budget Office continued

(1) The office known as the Parliamentary Budget Office shall continue to exist as an office of the Parliamentary Service.

(2) In addition to any other criteria established by the Parliamentary Service Commission, the Budget Office shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

10. Responsibilities of the Parliamentary Budget Office

(1) The Parliamentary Budget Office shall—

(a) provide professional services in respect of budget, finance, and economic information to the committees of Parliament;

(b) prepare reports on budgetary projections and economic forecasts and make proposals to Committees of Parliament responsible for budgetary matters;

(c) prepare analyses of specific issues, including financial risks posed by Government policies and activities to guide Parliament;

(d) consider budget proposals and economic trends and make recommendations to the relevant committee of Parliament with respect to those proposals and trends;

(e) establish and foster relationships with the National Treasury, county treasuries and other national and international organisations, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;

(f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the Parliamentary Budget Office are prepared, published and publicised not later than fourteen days after production; and

(g) report to the relevant committees of Parliament on any Bill that is submitted to Parliament that has an economic and financial impact, making reference to the fiscal responsibility principles and to the financial objectives set out in the relevant Budget Policy Statement; and

(h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(2) In carrying out its functions under subsection (1), the Parliamentary Budget Office shall observe the principle of public participation in budgetary matters.

Part III – NATIONAL GOVERNMENT RESPONSIBILITIES WITH RESPECT TO THE MANAGEMENT AND CONTROL OF PUBLIC FINANCE

Establishment of the National Treasury

11. Establishment of the National Treasury

(1) There is established, pursuant to Article 225 of the Constitution, an entity of the national government to be known as the National Treasury.

(2) The National Treasury shall comprise of—

(a) the Cabinet Secretary;

(b) the Principal Secretary; and

(c) the department or departments, office or offices of the National Treasury responsible for economic and financial matters.

(3) The Cabinet Secretary shall be the head of the National Treasury.

12. General responsibilities of the National Treasury

(1) Subject to the Constitution and this Act, the National Treasury shall—

(a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;

(b) manage the level and composition of public debt, guarantees and other financial obligations of government within the framework of this Act and develop a framework for sustainable debt control;

(c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;

(d) mobilise domestic and external resources for financing national and county government budgetary requirements;

(e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution:

Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;

(f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;

(g) develop policy for the establishment, management, operation and winding up of public funds;

(h) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the legislative proposals on annual Division of Revenue and County Allocation of Revenue;

(i) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and

(j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

(2) The National Treasury shall have the following functions, in addition to those in subsection (1)—

(a) promote transparency, effective management and accountability with regard to public finances in the national government;

(b) ensure proper management and control of, and accounting for the finances of the government and its entities in order to promote the efficient and effective use of budgetary resources;

(c) co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities;

(d) prepare annual estimates of revenue of the national government, and co-ordinate the preparation of the budget of the national government;

(e) consolidate reports of annual appropriation accounts and other financial statements of the national government and county governments and their entities;

(f) report every four months to the National Assembly on the implementation of the annual national budget on areas not reported on by the Controller of Budget;

(g) be the custodian of an inventory of national government assets except as may be provided by other legislation or the Constitution;

(h) monitor the management of the finances of public enterprises and investments by the national government and its entities;

(i) monitor the financial aspects of risk management strategies and governance structures for the national government and national government entities;

(j) monitor the financial performance of state corporations; and

(k) issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.

(3) The National Treasury shall take such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

[Act No. 6 of 2014, s. 3, Act No. 12 of 2023, s. 3.]

13. Powers of the National Treasury

(1) The Cabinet Secretary may generally give to the National Treasury such powers as are necessary to facilitate the Cabinet Secretary and national government to exercise their powers in the Constitution, and in particular, the National Treasury may do all or any of the following—

(a) with prior notification to the entity, access any system of public financial management and control of national government entity;

(b) where reasonably necessary in the execution, of its functions, access the premises of any national State Organ or other public entity and inspect the entity's records and other documents relating to financial matters after giving notice;

(c) require national government entities to comply with any specified applicable norms or standards regarding accounting practices and budget classification systems;

(d) require any public officer in the national government to provide information and if necessary, explanations with respect to matters concerning public finance:

Provided that a person providing information shall not be liable if at the time of providing the information that person, in writing, objected to providing such information on grounds that the information may incriminate him or her;

(e) provide any County Treasury with any information as it may require to carry out its responsibilities under the Constitution and this Act; and

(f) perform any other act as the Cabinet Secretary may consider necessary including power to intervene where a state entity or state organ fails to operate a financial system that complies with requirements provided for under this Act or is in serious material breach under this Act or in accordance with Articles 190 and 225 of the Constitution.

(2) The National Treasury may authorise any of its officers in writing to carry out a responsibility or exercise a power specified in the authorisation on behalf of the National Treasury.

(3) When acting in terms of subsection (2), an authorised officer, if requested by the person in relation to whom the responsibility or power is being carried out or exercised, shall produce the authorisation for inspection and failure to comply with that request invalidates any subsequent action purporting to be taken in terms of the authorisation.

(4) An authorisation given under subsection (2) remains in force for a period specified in it or, if no period is specified, until it is revoked by the National Treasury.

(5) The National Treasury may, in writing, revoke or vary an authorisation given under subsection (2).

14. Secondment of public officers by National Treasury to County Treasury

(1) Subject to Articles 189 and 190 of the Constitution, the National Treasury may, upon request by the County Treasury, and for a period that shall be agreed, second to a County Treasury for purposes of capacity building, such number of officers as may be necessary for the County Treasury to better carry out its functions under this Act.

(2) A public officer seconded to a County Treasury under subsection (1), shall be deemed to be an officer of the County Treasury and shall be subject only to the direction and control of the County Treasury.

15. The National Treasury to enforce fiscal responsibility principles

(1) The National Treasury shall manage the national government's public finances in accordance with the Constitution, and the principles of fiscal responsibility set out in subsection (2).

(2) In managing the national government's public finances, the National Treasury shall enforce the following fiscal responsibility principles—

(a) over the medium term a minimum of thirty percent of the national and county governments budget shall be allocated to the development expenditure.

(b) the national government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the national government revenue as prescribed by regulations;

(c) over the medium term, the national government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;

(d) public debt and obligations shall be maintained at a sustainable level as approved by Parliament for the national government and the county assembly for county government;

(e) fiscal risks shall be managed prudently; and

(f) a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.

(3) For the purposes of subsection (2)(c), short term borrowing shall be restricted to management of cash flows and in case of a bank overdraft facility it shall not exceed five per cent of the most recent audited national government revenue.

(4) The National Treasury shall ensure that the level of public debt does not exceed the level specified annually in the medium term national government debt management strategy submitted to Parliament.

(5) Regulations made under this Act may add to the list of fiscal principles set out in subsection (2).

[Act No. 12 of 2023, s. 4.]

16. National government deviation from financial objectives

(1) The national government may, with the approval of Parliament, deviate from the financial objectives in a Budget Policy Statement on a temporary basis where such deviation is necessitated by a major natural disaster or other significant unforeseen event.

(2) If there is a change of national government, the new government may, with the approval of Parliament, deviate from the financial objectives in a Budget Policy Statement but shall not deviate from the fiscal responsibility principles.

(3) The National Treasury shall provide a report to Parliament regarding the deviation, and shall include in the report—

(a) the reasons for and the implications of the deviation;

(b) proposals to address the deviation;

(c) the period the deviation is estimated to last; and

(d) the status of development projects initiated by the national government and if any project has been stopped, the reasons for doing so.

(4) The National Treasury shall publish and publicise the report made under subsection (3) within fifteen days after its submission to Parliament.

Responsibilities of the National Treasury with respect to national public funds

17. The National Treasury to administer the Consolidated Fund

(1) The National Treasury shall administer the Consolidated Fund in accordance with Article 206 of the Constitution.

(2) The National Treasury shall maintain the Consolidated Fund in an account to be known as the National Exchequer Account, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution—

(a) facilitate payment into that account all money raised or received by or on behalf of the national government; and

(b) pay from that National Exchequer Account without undue delay all amounts that are payable for public services.

(3) The National Treasury shall ensure that the National Exchequer Account is not overdrawn at any time.

(4) Where a withdrawal from the Consolidated Fund is authorised under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval.

(5) The approval of a withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the National Exchequer Account in accordance with the approval and instructions provided.

(6) The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to county governments for the expenditure of the following month.

(7) The disbursement referred to in subsection (6) shall be done in accordance with a schedule prepared by the National Treasury in consultation with the Intergovernmental Budget and Economic Council, with the approval of the Senate, and published in the *Gazette*, as approved, not later than the 30th May in every year.

[Act No. 34 of 2013, s. 14.]

18. The National Treasury to administer the Equalisation Fund

(1) The National Treasury shall administer the Equalisation Fund in accordance with Article 204 of the Constitution.

(2) The National Treasury shall keep the Equalisation Fund in a separate account maintained at the Central Bank of Kenya and shall—

(a) transfer into that Equalisation Fund all revenues payable into the Fund under Article 204(1) of the Constitution; and

(b) transfer from that Equalisation Fund, without undue delay, all money for purposes specified in Article 204(2) of the Constitution.

(3) The National Treasury shall ensure that the Equalisation Fund Account is not overdrawn at any time.

(4) Where a withdrawal from the Equalisation Fund is authorised under an Act of Parliament that approves the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval.

(5) The approval by the Controller of Budget of a withdrawal from the Equalisation Fund, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalisation Fund Account in accordance with the approval and instructions given.

(6) Any unutilised balances in the Equalisation Fund shall not lapse at the end of the Financial year, but shall be retained for use for the purposes for which the Equalisation Fund was established.

19. Source of the Contingencies Fund

The Contingencies Fund shall consist of monies appropriated from the Consolidated Fund by an appropriation Act in any financial year.

20. Cabinet Secretary to administer the Contingencies Fund

(1) The Cabinet Secretary shall administer the Contingencies Fund.

(2) The permanent capital of the Contingencies Fund shall not exceed ten billion shillings or such other amount as may be prescribed by the Cabinet Secretary with the approval of Parliament.

(3) The Cabinet Secretary shall keep the Contingencies Fund in a separate account, maintained at the Central Bank of Kenya and shall pay—

(a) into that account all monies appropriated to the Contingencies Fund by an appropriation Act; and

(b) from the Contingencies Fund, without undue delay, all advances made under section 21.

21. Advances from the Contingencies Fund

(1) Subject to section 22, the Cabinet Secretary may make advances from the Contingencies Fund if, on the basis of the set criteria and the process and operational guidelines of Article 208(1) as prescribed in regulations approved by Parliament and the laws relating to disaster management, the Cabinet Secretary is satisfied that an urgent and unforeseen need for expenditure has arisen for which there is no specific legislative authority.

(2) For the purposes of subsection (1), there is an urgent need for expenditure if the Cabinet Secretary, guided by regulations and relevant laws, establishes that—

(a) the payment which was not budgeted for because it was unforeseen and cannot be delayed until a later financial year without harming the general public interest; and

(b) the event was unforeseen.

(3) In addition to regulations and relevant laws, and for the purposes of this section, an unforeseen event is one which—

(a) threatens serious damage to human life or welfare;

(b) threatens serious damage to the environment; and

(c) is meant to alleviate the damage, loss, hardship or suffering caused directly by the event.

(4) An event threatens damage to human life or welfare under subsection (3)(a) only if it involves, causes or may cause—

(a) loss of life, human illness or injury;

(b) homelessness or damage to property;

(c) disruption of food, water or shelter; or

(d) disruption to services, including health services.

(5) Subject to subsection (2), the Cabinet Secretary shall, by regulations and with Parliament approval, prescribe the criteria for making advance under subsection (1).

22. Cabinet Secretary to seek Parliamentary approval for payments made from Contingencies Fund

(1) Not later than two months after a payment from the Contingencies Fund in terms of section 21, the Cabinet Secretary shall submit to Parliament a detailed report in respect of the payment setting out the information specified in section 23(2) and seek Parliament to approve the payment.

(2) If Parliament does not sit during the period referred to in subsection (1), or is not sitting at the end of that period and the Cabinet Secretary has not sought the approval of Parliament before the end of that period, the Cabinet Secretary shall seek the approval for the payment not later than fourteen days after Parliament next sits.

(3) As soon as practicable after the Parliament has approved the payment, the Cabinet Secretary shall cause an appropriation Bill to be introduced in Parliament for the appropriation of the money paid and for the replenishment of the Contingencies Fund to the extent of the amount of the payment.

23. Financial statements in respect of the Contingencies Fund

(1) Not later than three months after the end of each financial year, the National Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Contingencies Fund.

(2) The National Treasury shall include the following information in the financial statements submitted under subsection (1)—

(a) the date and amount of each payment made from that Contingencies Fund;

(b) the person to whom the payment was made;

(c) the purpose for which the payment was made;

(d) if the person to whom the payment was made has spent the money for that purpose, a statement to that effect;

(e) if the person to whom the payment was made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so; and

(f) a statement indicating how the payment conforms to section 21.

24. Establishment of Parliamentary Fund and other national government public funds

(1) There is established a fund to be known as the Parliamentary Fund.

(2) The Secretary to the Parliamentary Service Commission shall, on the directions of the Commission, open and operate such bank accounts as may be necessary for the purposes of the Parliamentary Fund.

(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish the following public funds—

(a) Parliamentary Mortgage (Members) Scheme Fund;

(b) Parliamentary Mortgage (Staff) Scheme Fund;

(c) Parliamentary Car Loan (Members) Scheme Fund;

(d) Parliamentary Car Loan (Staff) Scheme Fund; and

(e) Parliamentary Catering Fund.

for purposes of Parliament or a House of Parliament.

(3) Notwithstanding any other provisions of this Act, where a Fund is established under this Act or any other law for the purposes of Parliament or a House of Parliament, the Parliamentary Service Commission shall—

(a) establish procedures and systems for proper and effective management of the monies and property of the Fund;

(b) establish accounting procedures and systems for the Commission to properly account for the monies and property;

(c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;

(d) prepare and submit accounts for each financial year in accordance with the written law for the time being relating to audit for audit by the Auditor-General; and

(e) ensure that accounts prepared under paragraph (d) comply with the provisions of this Act.

(4) The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

(5) The Cabinet Secretary shall designate a person to administer every national public fund established under subsection (4).

(6) The administrator of a national public fund shall ensure that the earnings of, or accruals to a national public fund are retained in the fund unless the Cabinet Secretary directs otherwise.

(7) The administrator of a national public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (6), is spent only for the purposes for which the fund is established.

(8) The Cabinet Secretary may wind up a national public fund with the approval of the National Assembly.

(9) On the winding up of a national public fund—

(a) the administrator of the national public fund shall pay any amount remaining in the fund into the National Exchequer Account for the credit of the national government; or

(b) the Cabinet Secretary shall pay any deficit in the fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and

(c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.

(10) The administrator of a national public fund—

(a) shall prepare financial statements for the fund for each financial year in a form specified by the Accounting Standards Board; and

(b) not later than three months after the end of each financial year, submit those statements to the Auditor-General and deliver a copy of the statements to the National Treasury, Commission on Revenue Allocation and the Controller of Budget.

(11) The regulations shall provide for the establishment, management, operation or winding-up of national public funds.

(12) This section applies to all other rational public funds including funds earmarked for specific purposes established by an Act of Parliament but does not apply to a public fund established by the Constitution.

(13) In this section—

"administrator", in relation to a national public fund, means a person designated by the Cabinet Secretary under subsection (5) to administer the fund; and

"national public fund" means a public fund established under subsection (4).

[Act No. 18 of 2018, Sch., Act No. 13 of 2020, s. 2.]

Responsibilities of the National Treasury with respect to the Budget process

25. National Treasury to prepare annual Budget Policy Statement

(1) The National Treasury shall prepare and submit to Cabinet the Budget Policy Statement for approval.

(2) The National Treasury shall submit the Budget Policy Statement approved in terms of subsection (1) to Parliament, by the 15th February in each year.

(3) In preparing the Budget Policy Statement, the National Treasury shall set out the broad strategic priorities and policy goals that will guide the national government and county governments in preparing their budgets both for the following financial year and over the medium term.

(4) The National Treasury shall include in the Budget Policy Statement—

(a) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;

(b) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;

(c) the proposed expenditure limits for the national government, including those of Parliament and the Judiciary and indicative transfers to county governments; and

(d) the fiscal responsibility principles and financial objectives over the medium term including limits on total annual debt.

(5) In preparing the Budget Policy Statement, the National Treasury shall seek and take into account the views of—

(a) the Commission on Revenue Allocation;

(b) county governments;

(c) Controller of Budget;

(d) the Parliamentary Service Commission;

(e) the Judicial Service Commission;

(f) the public; and

(g) any other interested persons or groups.

(6) Regulations made under this Act shall prescribe circumstances and the manner in which persons or groups may make written or oral representations about the contents of the statement.

(7) Parliament shall, not later than fourteen days after the Budget Policy Statement is submitted to Parliament, table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.

(8) The Cabinet Secretary shall take into account resolutions passed by Parliament in finalising the budget for the relevant financial year.

(9) The National Treasury shall publish and publicise the Budget Policy Statement not later than fifteen days after submission of the Statement to Parliament.

26. National Treasury to prepare Budget Review and Outlook Paper

(1) The National Treasury shall prepare and submit to Cabinet for approval, by the 30th September in each financial year, a Budget Review and Outlook Paper which shall include—

(a) actual fiscal performance in the previous financial year compared to the budget appropriation for that year;

(b) updated macro-economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent Budget Policy Statement;

(c) information on how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles or the financial objectives in the latest Budget Policy Statement; and

(d) the reasons for any deviation from the financial objectives together with proposals to address the deviation and the time estimated to do so.

(2) Cabinet shall consider the Budget Review and Outlook Paper with a view to approving it, with or without amendments, not later than fourteen days after its submission.

(3) Not later than seven days after the Budget Review and Outlook Paper has been approved by Cabinet, the National Treasury shall—

(a) submit the Paper to the Budget Committee of the National Assembly to be laid before each House of Parliament; and

(b) publish and publicise the Paper not later than fifteen days after laying the Paper before Parliament.

27. Publication of pre- and post-election economic and fiscal reports by National Treasury

(1) The National Treasury shall arrange to be published—

(a) a pre-election economic and fiscal update not earlier than four months before the polling day for any general election; and

(b) a post-election economic and fiscal update not later than four months after the polling day of any general election.

(2) The pre-election and post-election economic and fiscal update shall—

(a) detail all election related spending including—

(i) direct election expenses such as those for the Independent Electoral and Boundaries Commission for costs of elections and election materials;

(ii) indirect election expenses such as allocations to police and security forces for the election year; and

(iii) any other expenses related to the election specified in regulations or instructions; and

(b) be accompanied by a statement signed by the Principal Secretary stating that the economic and fiscal updates include—

(i) all policy decisions with material economic or fiscal implications that the national government made before the day on which the contents of the economic and fiscal updates were finalised;

(ii) all other circumstances with material economic or fiscal implications of which the National Treasury was aware before those days; and

(iii) a confirmation that the economic and fiscal updates were prepared using the best professional judgment and information available before the economic and fiscal updates were finalised.

(3) If the day of dissolution of Parliament is less than two months before the day appointed as polling day for the general election, the Cabinet Secretary shall arrange for the pre-election economic and fiscal update required under this section to be published not later than fourteen days after the day of the dissolution of Parliament.

Other responsibilities of the National Treasury

28. Banking arrangements for national government entities

(1) The National Treasury shall authorise the opening, operating and closing of bank accounts and sub accounts for all national government entities in accordance with regulations made under this Act.

(2) The National Treasury shall establish a Treasury Single Account into which all revenues received by national government entities shall be deposited and from which all payments of money to or on behalf of national government entities shall be made.

(3) The Treasury Single Account shall not be operated in any manner that prejudices any entity to which funds have been disbursed.

(4) An accounting officer for a national government entity shall not cause a bank account of the entity to be overdrawn beyond the limit authorised by the National Treasury or a board of a national government entity, if any.

(5) Subject to subsection (3), an accounting officer who authorises the bank account of a national government entity to be overdrawn is liable for the full cost of the overdrawn amount, in addition to any other disciplinary measures that—

(a) the Cabinet Secretary may impose by regulations; or

(b) any other relevant authority may impose under the provisions of any other legislation.

(6) The National Treasury shall keep complete and current records of all bank accounts for which it is responsible under the Constitution, this Act or any other legislation.

(7) The National Treasury shall give monthly statements on actual revenue collected in the accounts relating to Article 206 of the Constitution to the Commission on Revenue Allocation.

29. Management of cash at the national government level

(1) The National Treasury shall establish a framework within which the national government shall manage its cash transactions.

(2) Every national government entity, other than a state corporation, shall submit an annual cash plan and forecast to—

(a) the National Treasury in a form and manner and relating to such periods directed by that Treasury; and

(b) the Controller of Budget.

(3) Subject to the Constitution, the Cabinet Secretary may, notwithstanding any previous authority given, limit or suspend national government expenditure, if in the Cabinet Secretary's opinion, the exigencies of the financial situation render such a limitation or suspension necessary.

(4) The approval of the National Assembly for any limitation or suspension under subsection (3) shall be sought within two months of the decision being made.

(5) The National Treasury may invest, subject to any regulations that may be prescribed, any money kept in a bank account of the national government.

(6) Except as otherwise provided by legislation—

(a) interest received from investments made under subsection (5); and

(b) money received from the redemption or maturity of those investments, and from the sale or conversion of securities relating to them, is payable into the National Exchequer Account.

(7) The National Treasury may incur costs, charges and expenses in connection with negotiating, placing, managing, servicing, or converting any investment entered into under subsection (5).

(8) Costs, charges or expenses referred to under subsection (7) shall be paid from the Consolidated Fund in accordance with Article 228 of the Constitution.

30. Procurement of goods and services

For the purposes of this Act, all procurement of goods and services required for the purposes of the national government or a national government entity is to be carried out in accordance with Article 227 of the Constitution and the relevant legislation on procurement and disposal of assets.

31. Cabinet Secretary to report on all loans

(1) The Cabinet Secretary shall submit to Parliament, every four months, a report of all loans made to the national government, national government entities and county governments, in accordance with Article 211(2) of the Constitution.

(2) Where either House of Parliament is canvassing a matter relating to the public debt, the Cabinet Secretary shall submit to Parliament, a report of all loans made to the national government, national government entities, and county governments, not later than seven days after receiving a request to do so from either House of Parliament.

(3) At the end of every four months, the Cabinet Secretary shall submit a report to Parliament stating the loan balances brought forward, carried down, drawings and amortizations on new loans obtained from outside Kenya or denominated in foreign currency, and such other information as may be prescribed by regulations, specifying—

(a) the names of the parties to the loan;

(b) the amount of the loan and the currency in which it is expressed and in which it is repayable;

(c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;

(d) the amount of the loan advanced at the time the report is submitted;

(e) the purpose for which the loan was used and the perceived benefits of the loan; and such other information as the Cabinet Secretary may consider appropriate.

[Act No. 12 of 2023, s. 5.]

32. Cabinet Secretary to report on national government guarantees

(1) The Cabinet Secretary shall submit to Parliament, a record of all guarantees given by the national government, not later than seven days after receiving a request to do so from either House of Parliament.

(2) The Cabinet Secretary shall, with respect to every such guarantee, specify the following information in the record—

(a) names of the parties to the loan that is guaranteed;

(b) principal amount of that loan;

(c) terms and conditions applicable to that loan, including—

(i) interest and other charges that are payable in respect of that loan; and

(ii) terms of its repayment.

(3) Not later than two months after the end of each financial year, the Cabinet Secretary shall publish and publicise a report giving details of the guarantees given by the national government during that year.

(3A) Notwithstanding the provisions of subsection (2), the Cabinet Secretary shall, with respect to credit guarantees extended to private borrowers who are micro, small or medium enterprises, provide the information specified in section 59A(2) when either House of Parliament makes a request under subsection (1).

[Act No. 16 of 2020, s. 3.]

33. Cabinet Secretary to submit national government debt management strategy to Parliament annually

(1) On or before the 15th February in each year, the Cabinet Secretary shall submit to Parliament a statement setting out the debt management strategy of the national government over the medium term with respect to its actual liability and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities.

(2) The Cabinet Secretary shall ensure that the medium-term debt management strategy is aligned to the broad strategic priorities and policy goals set out in the Budget Policy Statement.

(3) The Cabinet Secretary shall include in the statement the following information—

(a) the total stock of debt as at the date of the statement;

(b) the sources of loans made to the national government and the nature of guarantees given by the national government;

(c) the principal risks associated with those loans and guarantees;

(d) the assumptions underlying the debt management strategy; and

(e) an analysis of the sustainability of the amount of debt, both actual and potential.

(4) Within fourteen days after the debt strategy paper is submitted to Parliament under this section, the Cabinet Secretary shall submit the statement to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council and publish and publicise the statement.

34. The National Treasury to provide Parliament with additional reports when required

Either House of Parliament may request the Cabinet Secretary or the National Treasury to prepare and submit to that House a report on any matter relating to the Cabinet Secretary or National Treasury's responsibilities as the House of Parliament may specify.

National government budget process

35. Stages in the budget process

(1) The budget process for the national government in any financial year shall comprise the following stages—

(a) integrated development planning process which shall include both long term and medium term planning;

(b) planning and determining financial and economic policies and priorities at the national level over the medium term;

(c) preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures;

(d) adoption of Budget Policy Statement by Parliament as a basis for future deliberations;

(e) preparing budget estimates for the national government;

(f) submitting those estimates to the National Assembly for approval;

(g) enacting the appropriation Bill and any other Bills required to implement the National government's budgetary proposals;

(h) implementing the approved budget;

(i) evaluating and accounting for, the national government's budgeted revenues and expenditures; and

(j) reviewing and reporting on those budgeted revenues and expenditures every three months.

(2) The Cabinet Secretary shall ensure public participation in the budget process provided for under subsection (1).

36. Cabinet Secretary to manage budget process at national level

(1) The Cabinet Secretary shall manage the budget process at the national level.

(2) Not later than the 30th August in each year, the Cabinet Secretary shall issue to all national government entities a circular setting out guidelines on the budget process to be followed by them.

(3) The circular shall include—

(a) a schedule for preparation of the budget indicating key dates by which various exercises are to be completed;

(b) the procedures for the review and projection of revenues and expenditures;

(c) key policy areas and issues that are to be taken into consideration when preparing the budget;

(d) procedures setting out the manner in which members of the public shall participate in the budget process;

(e) the format in which budget information and documents shall be submitted; and

(f) any other information that, in the opinion of the Cabinet Secretary, may assist the budget process.

(4) Every national government entity shall comply with the guidelines, and in particular, such dates as are specified in the schedule referred to in subsection (3)(a).

(5) The Cabinet Secretary shall by regulations, prescribe procedures specifying how, when and where members of the public shall participate in the budget process at the national level.

(6) The Cabinet Secretary shall notify the members of the Intergovernmental Budget and Economic Council of the commencement of the budget process.

37. Submission of budget estimates and related documents for approval

(1) The Cabinet Secretary shall, within a period allowing time to meet the deadlines specified in this section, submit to the Cabinet for its approval—

(a) the budget estimates and other documents supporting the budget; and

(b) the draft Bills required to implement the national budget.

(2) The Cabinet Secretary shall submit to the National Assembly, by the 30th April in that year, the following documents—

(a) the budget estimates excluding those for Parliament and the Judiciary;

(b) documents supporting the submitted estimates; and

(c) any other Bills required to implement the national government budget.

(3) The accounting officers for the Parliamentary Services Commission shall, not later than the 30th April in each financial year—

(a) submit to the National Assembly the budget estimates for Parliament, including proposed appropriations; and

(b) provide the National Treasury with a copy of those documents.

(4) The Chief Registrar of the Judiciary shall, not later than the 30th April in each financial year—

(a) submit to the National Assembly the budget estimates for the Judiciary, including proposed appropriations; and

(b) provide the National Treasury with a copy of those documents.

(5) In preparing the documents referred to in subsections (3) and (4), the accounting officers for the Parliamentary Service Commission and the Chief Registrar of the Judiciary—

(a) shall ensure that members of the public are given an opportunity to participate in the preparation process; and

(b) may make and publish rules to be complied with by those who may wish to participate in the process.

(6) The Cabinet Secretary shall submit to the National Assembly not later than the 15th May any comments of the National Treasury on the budgets proposed by the Parliamentary Service Commission and the Chief Registrar for the Judiciary.

(7) The Cabinet Secretary shall ensure that the budget process is conducted in a manner and within a time frame sufficient to permit the various participants in the process to comply with the requirements of the Constitution and this Act.

(8) As soon as practicable after the budget estimates and other documents have been submitted to the National Assembly under this section, the Cabinet Secretary shall publicise those documents.

(9) Upon approval of the budget estimates by the National Assembly, the Cabinet Secretary shall prepare and submit an Appropriation Bill of the approved estimates to the National Assembly.

[Act No. 38 of 2016, s. 57.]

38. Submission of other budget documents to the National Assembly

(1) The Cabinet Secretary shall submit to the National Assembly the following other budget documents for each financial year—

(a) a budget summary that includes—

(i) a summary of budget policies including policies on revenue, expenditure, debt and deficit financing;

(ii) an explanation of how the budget relates to the fiscal responsibility principles and to the financial objectives; and

(iii) a memorandum by the Cabinet Secretary explaining how the resolutions adopted by the National Assembly on the Budget Policy Statement under section 25(7) have been taken into account.

(b) the format of the budget estimates shall include—

(i) a list of all entities that are to receive funds appropriated from the budget of the national government;

(ii) estimates of revenue allocated to, and expenditures projected from, the Equalisation Fund over the medium term, with an explanation of the reasons for those revenue

allocations and expenditures and how these estimates comply with the policy developed by the Commission on Revenue Allocation under Article 216(4) of the Constitution;

(iii) all revenue allocations to county governments from the national government's share in terms of Article 202(2) of the Constitution, including conditional and unconditional grants;

(iv) all estimated revenue by broad economic classification;

(v) all estimated expenditure, by vote and by programme, clearly identifying both recurrent and development expenditures; and

(vi) an estimate of any budget deficit or surplus for the financial year and medium term and the proposed sources of financing;

(c) information regarding loans made by the national government, including an estimate of principal, interest and other charges to be received by the national government in the financial year in respect of those loans;

(d) information regarding loans and guarantees made to and by the national government, including an estimate of principal, interest and other charges to be paid by the national government in the financial year in respect of those loans;

(e) information regarding any payments to be made and liabilities to be incurred by the national government for which an appropriation Act is not required which shall include the constitutional or national legislative authority for any such payments or liabilities; and

(f) a statement by the National Treasury specifying the measures taken by the national government to implement any recommendations made by the National Assembly with respect to the budget for the previous financial year or years.

(2) The nature of information that is to be presented in the budget estimates and the form of its presentation shall be prescribed in regulations and the regulations shall be tabled in Parliament for approval.

(3) The Cabinet Secretary shall ensure that the expenditure appropriations and the budget estimates in an appropriation Bill are presented in a way that—

(a) is accurate, precise, informative and pertinent to budget issues; and

(b) clearly identifies the appropriations by vote and programme.

39. National Assembly to consider budget estimates

(1) The National Assembly shall consider the budget estimates of the national government, including those of Parliament and the Judiciary, with a view to approving them, with or without amendments, in time for the Appropriation Bill and any other relevant Bills, required to implement the budget to be assented to by the 30th June each year.

(2) Before the National Assembly considers the estimates of revenue and expenditure, the relevant committee of the National Assembly shall discuss and review the estimates and make recommendations to the National Assembly, taking into account the views of the Cabinet Secretary and the public on the proposed recommendations.

(3) The National Assembly may amend the budget estimates of the national government only in accordance with the Division of Revenue Act and the resolutions adopted with regard to the Budget Policy Statement ensuring that—

(a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or

(b) a proposed reduction in expenditure is used to reduce the deficit.

(4) Where a Bill originating from a member of the National Assembly proposes amendments after passing the budget estimates and the appropriations Bill by Parliament, the National Assembly may only proceed in accordance with—

(a) the Division of Revenue Act;

(b) Article 114 of the Constitution; and

(c) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation or any proposed reduction in expenditure is used to reduce the deficit.

(5) Not later than twenty-one days after the National Assembly has approved the budget estimates, the National Treasury shall consolidate, publish and publicise the budget estimates.

(6) The National Treasury shall take all reasonably practicable steps to ensure that the approved budget estimates are prepared and publicised in a form that is clear and easily understood by, and readily accessible to, members of the public.

(7) Following approval of the budget estimates under this section, and before the Appropriation Act is assented to, the National Assembly may authorise withdrawals in accordance with Article 222 of the Constitution, and such authority shall be communicated to the Cabinet Secretary responsible for finance by the Speaker of the National Assembly within seven days of that authority being granted by the National Assembly.

(8) The Controller of Budget shall ensure that members of the public are given information on budget implementation both at the national and county government level in accordance with Article 228 of the Constitution.

[Act No. 12 of 2019, Sch.]

39A. Submission, consideration and passing of Finance Bill

(1) The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be presented for assent by 30th June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall—

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and

(g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

[Act No. 12 of 2019, Sch., Act No. 1 of 2020, s. 27.]

40. Submission and consideration of budget policy highlights and the Finance Bill in the National Assembly

(1) Each financial year, the Cabinet Secretary shall, with the approval of Cabinet, make a public pronouncement of the budget policy highlights and revenue raising measures for the national government.

(2) In making the pronouncement under subsection (1), the Cabinet Secretary shall take into account any regional or international agreements that Kenya has ratified, including the East African Community Treaty and where such agreements prescribe the date when the budget policy highlights and revenue raising measures are to be pronounced, the Cabinet Secretary shall ensure that the measures are pronounced on the appointed date.

(3) *Deleted by Act No. 3 of 2024, Sch.*

(4) *Deleted by Act No. 3 of 2024, Sch.*

(5) Any of the recommendations made by the relevant committee of the National Assembly or adopted by the National Assembly on revenue matters shall—

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of the tax revenue with reference to the direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and

(g) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(6) The recommendations of the Cabinet Secretary in subsection (5)(f) shall be included in the report and tabled in the National Assembly.

[Act No. 6 of 2014, s. 4, Act No. 3 of 2024, Sch.]

41. [Deleted by Act No. 12 of 2019, Sch.]

42. Consideration by Parliament of Bills allocating revenue and additional allocations

Parliament shall consider the Division of Revenue Bill, the County Allocation of Revenue Bill, and a County Governments Additional Allocations Bill not later than thirty days after the Bills have been introduced with a view to approving them, with or without amendments.

[Act No. 17 of 2022, s. 9(a).]

43. Limited powers of accounting officer of national government entity to reallocate appropriate funds

(1) An accounting officer may reallocate funds from the authorised use but may not reallocate funds where—

(a) the funds are appropriated for transfer to another government entity or person;

(b) the funds are appropriated for capital expenditure except to defray other capital expenditure;

(c) the reallocation of funds is from wages to non-wages expenditure; or

(d) the transfer of funds may result in contravention of fiscal responsibility principles.

(2) An accounting officer for a national government entity, other than a state corporation, may reallocate funds between programs, or between Sub-Votes, in the budget for a financial year if—

(a) there are provisions in the budget of a program or Sub-Vote which are unlikely to be utilised;

(b) a request for the reallocation has been made to the National Treasury explaining the reasons for the reallocation and the National Treasury has approved the request; and

(c) the total sum of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that financial year.

(3) Regulations made under this Act may provide for the reallocation of funds within Sub-votes or programs.

44. National government to submit supplementary budget to Parliament

(1) The national government shall submit to Parliament for approval, a supplementary budget in support of money spent under Article 223 of the Constitution.

(2) After Parliament has approved spending under subsection (1), an Appropriation Bill shall be introduced for the appropriation of the money spent.

(3) The supplementary budget shall include a statement showing how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

45. Appropriations to lapse if unspent at the end of the financial year

(1) An appropriation that has not been spent at the end of the financial year for which it was appropriated shall lapse immediately at the end of that financial year.

(2) Subject to any other legislation, where, at the end of a financial year, a national government entity is holding appropriated money that was withdrawn from the National Exchequer Account but has not been spent, it shall repay the unspent money into the National Exchequer Account and shall prepare and submit a statement of the same to the Controller of Budget.

Responsibilities of the Cabinet Secretary and functions of the national government with respect to grants and loans

46. Overall responsibility of Cabinet Secretary

(1) The Cabinet Secretary shall, in addition to his or her other functions under the Constitution, this Act and any other legislation—

(a) oversee the formulation of macro-economic and financial policies of the Government;

(b) by agreement, assist national government entities and county governments in building capacity for efficient, effective and transparent financial management;

(c) where applicable, support the efforts of national government entities and county governments to avert or resolve their financial problems.

(2) Within twenty-one days after the end of each month, the Cabinet Secretary shall publish in the *Gazette* a statement of actual revenues collected by category and net exchequer issues by the National Treasury.

(3) In the performance of the duties and functions under this Act the Cabinet Secretary shall—

(a) seek views from county governments on the proposed macro-economic and financial policies using the Intergovernmental Budget and Economic Council established under this Act;

(b) share with national government entities and county governments any findings that may assist national government entities and county governments in improving their financial management; and

(c) upon detecting any emerging or impending financial problems in a national government entity or county government, immediately alert the national government entity or county government of the problem.

47. Conditions for receiving grants and donations by national government or its entities or third parties

(1) In this section and section 48—

(a) "donation" means a gift or a contribution;

(b) "grant" means financial or other assistance by a development partner which is not repayable and—

(i) under which public money is paid to or used by a grant recipient;

(ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and

(iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.

(c) "grant recipient" means the national government or a national government entity authorised to control or spend money under this Act or an incorporated or unincorporated body not otherwise authorised to control or spend money under this Act;

(d) "intended beneficiaries" means the people of Kenya whom the projects or public services financed by a grant are intended to benefit;

(e) "third party" means any other person other than a public officer.

(2) Subsections (3) to (10) apply to the national government and a national government entity.

(3) The national government or a national government entity may receive a grant or donation from a development partner with the approval of the Cabinet Secretary and only as provided by this section.

(4) Funds received in the form of grants or donations shall only be spent in accordance with Articles 221 and 223 of the Constitution and this section.

(5) As soon as possible after receiving the grant or donation, the recipient shall notify the Cabinet Secretary of the receipt.

(6) If a project that is being financed by a grant or donation requires national government funding, the project may only be started when—

(a) the required funding has been appropriated in accordance with this Act or is authorised by other legislation; or

(b) the Cabinet Secretary has given a written authorisation for the project to start.

(7) The Cabinet Secretary shall inform Parliament of the authorisation given under subsection (6)(b) in accordance with Article 223 of the Constitution.

(8) The recipient of a grant or donation from a development partner shall record the amount or value of the grant or donation in its books of accounts.

(9) Subject to audit in terms of Article 229(4) of the Constitution, the recipient of a grant or donation shall administer and account for the grant or donation by using—

(a) government financial accounting and auditing laws and, administrative procedures; or

(b) any financial accounting rules and procedures for money specified in the agreement between the recipient and the development partner.

(10) The Cabinet Secretary may in addition to the audit under subsection (9), permit a donor of a grant to audit such funds on the basis of its own financial accounting rules.

48. Regulations on grant administration

(1) Regulations approved by Parliament shall provide for the administration, control and management of grants, including—

(a) procedures to ensure that grants are spent on the basis of the integrated national development plan;

(b) procedures for the allocation and disbursement of the grants;

(c) requiring that grants be used only to finance programmes within the integrated development plan;

(d) the publication of transparent criteria for the allocation of grants;

(e) requiring specific terms and conditions in agreements to which grant recipients are subjected;

(f) procedures for the budgeting, financial management, accounting and reporting of grants by grants recipients;

(g) procedures under which a third party may be authorised to receive, control or pay public money as a grant; and

(h) measures to ensure that a third party authorised to receive, control or pay public money as a grant, or responsible for any other aspect of administration of a grant, is subject to the same obligations as a public officer under this Act.

(2) Regulations under subsection (1) shall include measures to ensure public disclosure, accountability and participation in relation to the grants, including—

(a) timely public disclosure to intended beneficiaries of the allocation and disbursement of grants to grant recipients;

(b) timely public disclosure by grant recipients to intended beneficiaries of expenditure and performance achieved in relation to the grant;

(c) measures to facilitate intended beneficiaries to participate in the design and management of projects or public services financed by the grant;

(d) measures allowing intended beneficiaries to report instances of non-compliance with the regulations or grant agreement;

(e) sanctions to be imposed on grant recipients for non-compliance with grant conditions by any grant recipient; and

(f) obligations of a public officer or third party authorised to receive, control or pay public money as grants.

(3) A third party shall not receive, have custody of, or pay public money otherwise than in accordance with an authorisation given in accordance with regulations made under subsection (1).

(4) A third party who contravenes provision under subsection (3), commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both and shall make good the loss arising from the use of public funds contrary to law.

49. Authority for borrowing by the national government

(1) Subject to provisions of this Act, the Cabinet Secretary may, on behalf of the national government, raise a loan only if the loan and the terms and conditions for the loan are set out in writing and in accordance with—

(a) the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement; and

(b) the debt management strategy of the national government over the medium term.

(2) A loan may be raised either within Kenya or from outside Kenya.

50. Obligations and restrictions on national government guaranteeing and borrowing

(1) In guaranteeing and borrowing money, the national government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market which is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) The national government may borrow money in accordance with this Act or any other legislation, subject to the threshold specified in subsection (2A) of this section.

(2A) The borrowing by the national government referred to in subsection (2) shall not exceed fifty-five percent of the gross domestic product in present value terms.

(2B) Notwithstanding subsection (2A), the national government may, in exceptional circumstances, exceed the threshold set under that subsection by not more than five percent.

(2C) The Cabinet Secretary shall, not later than five years from the date of the coming into force of subsections (2A) and (2B), take measures to ensure that borrowing by the national government complies with the threshold prescribed in subsection (2A).

(2D) The Cabinet Secretary shall submit to Parliament, a report on the breach of the debt threshold, indicating the exceptional circumstances, if any, provided for in subsection (2B).

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(6) A public debt and resultant financial obligations incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by Regulations approved by Parliament, that all or part of the

public debt and resultant financial obligation is a charge on another public fund established by the national government or any of its entities.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

(a) paid into the Consolidated Fund;

(b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;

(c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or

(d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

(a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and

(b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

(a) on the Consolidated Fund; or

(b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.

[Act No. 6 of 2014, s. 5, Act No. 12 of 2023, s. 6.]

51. Borrowing by national government entities

(1) A national government entity may borrow in accordance with this Act or any other Act of Parliament.

(2) A national government entity shall obtain the approval of the Cabinet Secretary for its intended program of borrowing, refinancing and repayment of loans—

(a) over the medium term; and

(b) for the forthcoming financial year, prior to the beginning of that financial year.

(3) A national government entity shall also obtain the approval of the Cabinet Secretary before making any changes to its program of borrowing, refinancing and repayment during a financial year.

(4) The national government is not liable to contribute towards payment of any debt or liability of a national government entity, unless the national government has guaranteed the debt or liability.

52. Persons authorized to execute loan documents at national government

(1) The Cabinet Secretary or any person designated by the Cabinet Secretary in writing is authorised to execute loan documents for borrowing by the national government.

(2) Despite the provisions of subsection (1), the following persons are authorised to execute loan documents for borrowing by a National government entity—

(a) the accounting officer responsible for the entity; or

(b) any other specified officer authorised by legislation to execute such documents on behalf of the entity.

53. Issuance of securities by national government

(1) The national government may issue national government securities, whether for money that it has borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

(2) The Cabinet Secretary may issue national government securities on behalf of the national government for money borrowed by the national government in accordance with criteria prescribed by regulations approved by Parliament for the purpose of this subsection.

(3) Any national government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set out by the National Assembly under section 50(2).

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by issuing national government securities.

(5) National government securities may be issued in one or more series and in accordance with prescribed regulations.

(6) An agreement to obtain a loan by the national government or a national government entity may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by Parliament.

(7) The Cabinet Secretary shall ensure that every national government security issued under this section is given in the name of the Republic of Kenya.

(8) A national government security may be executed on behalf of the national government only by—

(a) the Cabinet Secretary;

(b) a delegate appointed by the Cabinet Secretary; or

(c) a borrowing agent appointed for the purposes of this Act.

(9) For the purposes of subsection (8), it shall be sufficient if the signature of a person who is required to execute a national government security under this section is reproduced on the security.

(10) The Cabinet Secretary may authorise in writing the issue of a duplicate national government security to replace a national government security that is lost, damaged, or destroyed, but only if the Cabinet Secretary is satisfied that the loss, damage or destruction has occurred.

(11) Subject to any other legislation, secondary trading of national government securities shall be carried out only in such manner as may be prescribed by regulations made for that purpose and for purposes of this subsection "secondary trading" means any activity leading to a change in the ownership of a national government security before its redemption date.

(12) Nothing provided in this section shall prevent, government securities to be issued and exist in electronic form as a debt entry.

(13) If the proceeds of a national government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder's personal representatives, are unknown, the Cabinet Secretary shall arrange for the National Treasury to credit the amount of money due to the holder to an interest free account for the holder's benefit.

(14) If, after six years from the redemption date of a national government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder's personal representatives, the Cabinet Secretary shall return the uncollected amount to the National Exchequer Account to form part of the Consolidated Fund in accordance with regulations.

(15) The right of any person who has a legitimate claim to the proceeds of a security is not affected by the payment of the proceeds into the Consolidated Fund.

(16) The Cabinet Secretary shall publish and publicise annually all payments made in terms of subsection (13).

[Act No. 6 of 2014, s. 6.]

53A. Issuance of external securities by national government

(1) Notwithstanding the provisions of section 53 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

(2) The Cabinet Secretary may raise an external loan or issue external government securities, authorized by this Act, on behalf of the national government for money borrowed by the national government in such manner as the Cabinet Secretary may determine.

(3) Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under section 50(2) of this Act.

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by raising external loans or issuing external government securities.

(5) The Cabinet Secretary shall ensure that every external loan or external government security issued under this section is given in the name of the Republic of Kenya.

(6) An external loan or external government security may be executed on behalf of the national government only by—

(a) the Cabinet Secretary;

(b) a delegate appointed by the Cabinet Secretary, in writing; or

(c) a borrowing agent appointed in accordance with section 50(9) of this Act.

(7) For the purposes of subsection (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security.

(8) External government securities shall be registered and may be recorded and traded in accordance with the terms and conditions of the external government security.

(9) Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six (6) years from the redemption date in the case of principal and five years from the due date in the case of interest or any other amount.

(10) In the case of external government securities, a duplicate external government security may be issued in accordance with the terms and conditions applicable to the external government security to replace an external government security that is lost, damaged or destroyed.

[Act No. 6 of 2014, s. 7.]

54. Exemption from stamp duty

Duty is not chargeable under the Stamp Duty Act (Cap. 480) for the issue of a national government security.

55. Establishment of the office of Registrar of national government securities

(1) There is established an office of the Registrar of the National Government Securities which shall be an office under the Public Debt Management Office.

(2) The office of Registrar of the National Government Securities shall be headed by the Registrar who shall be competitively recruited and appointed by the Cabinet Secretary.

(3) The Registrar shall establish and maintain a register, to be known as the Register of the National Government Securities in which shall be recorded details of all securities issued by or on behalf of the national government.

(4) Securities issued by or on behalf of the national government shall be published and publicised.

(5) An entry in the Register relating to a national government security is evidence of the ownership of the security, unless the contrary is proved.

(6) The holder of a national government security recorded in the Register may, in writing, request the Registrar to amend the entry relating to the security.

(7) If a request under subsection (6) is in accordance with guidelines given by the Cabinet Secretary for the purposes of this subsection, the Registrar shall, in accordance with the request, amend the entry in the Register relating to the security.

(8) The Registrar shall provide the holder of a national government security with a consolidated statement in writing, showing all entries in the register relating to the security—

(a) as soon as practicable after the security is issued;

(b) at least once during each year the security is held; and

(c) immediately after the security is redeemed.

(9) On receiving a written request from the holder of a national government security, the Registrar shall provide the holder with a statement showing all entries in the Register relating to the security.

(10) The provisions of this section shall not apply to external government securities except that notifications shall be made in the Register of the National Government Securities to reflect the outstanding amount of each issue of external debt securities.

[Act No. 6 of 2014, s. 8.]

56. Power of national government to enter into derivative transactions

(1) The national government may enter into derivative transactions, either directly or indirectly through an intermediary, but only within the framework and limits of the Budget Policy Statement and in a manner prescribed by regulations.

(2) The Cabinet Secretary may, on behalf of the national government, in exceptional circumstances enter into a derivative transaction if it appears to that Cabinet Secretary to be in the public interest to do so and the transaction does not result in commitment that is beyond what is contained in the Budget Policy Statement.

(3) The Cabinet Secretary may enter into a derivative transaction on such terms and conditions, within the scope prescribed by the regulations approved by the National Assembly.

(4) Money required to be paid by the national government under a derivative transaction entered into under this section shall be a charge—

(a) on the Consolidated Fund; or

(b) on some other public fund established for the purpose of making such payments, if the Cabinet Secretary determines so.

(5) Any expense incurred in connection with a derivative transaction entered into by the national government or by the Cabinet Secretary on behalf of the national government shall be a charge on the Consolidated Fund and no further appropriation than this section shall be required.

(6) Derivative transactions entered into in terms of this section shall be published and publicised.

57. Power of national government to lend money

(1) The national government is authorised to lend money but only in accordance with terms and conditions prescribed by the regulations approved by Parliament.

(2) A national government entity may lend money only if authorised to do so by an Act of Parliament and in accordance with terms and conditions prescribed in regulations.

(3) The Cabinet Secretary may, in relation to any money sent by the national government under this section—

(a) accept money payable under the loan in any currency considered appropriate by the Cabinet Secretary in consultation with the Central Bank of Kenya; and

(b) agree at any time to revise upwards any security given in respect of that loan.

(4) Money loaned under this section is payable only—

(a) from an appropriation for development expenditure; or

(b) from some other authority approved by Parliament for the purpose for which the loan is made.

(5) The Cabinet Secretary shall ensure that a security given in respect of a loan under this section is given in the name of the national government.

(6) The Cabinet Secretary may, on behalf of the national government, carry out any of the responsibilities and exercise any of the powers of the national government with respect to securing a loan granted by the national government.

58. Power of Cabinet Secretary to guarantee loans

(1) Subject to subsection (2), the Cabinet Secretary may guarantee a loan of a county government or any other borrower on behalf of the national government and that loan shall be approved by Parliament.

(2) The Cabinet Secretary shall not guarantee a loan under subsection (1) unless—

(a) the loan is for a capital project;

(b) the borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it;

(c) in the case of a private borrower, there is sufficient security for the loan;

(d) the financial position of the borrower over the medium term is likely to be satisfactory;

(e) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the national government;

(f) where Parliament has passed a resolution setting a limit for the purposes of this section—

(i) the amount guaranteed does not exceed that limit; or

(ii) if it exceeds that limit, the draft guarantee document has been approved by resolution of both Houses of Parliament;

(g) the Cabinet Secretary takes into account the equity between the national government's interests and the county government's interests so as to ensure fairness;

(h) the borrower complies with any conditions imposed by the Cabinet Secretary in accordance with the regulations;

(i) the Cabinet Secretary has taken into account the recommendation of the Intergovernmental Budget and Economic Council in respect of any guarantee to a county government; and

(j) the loan is made in accordance with provisions of this Act and any regulations made thereunder.

(3) Parliament may approve a draft loan guarantee document as provided by subsection (2)(f)(ii) only if satisfied that—

(a) the guarantee is in the public interest;

(b) the borrower's financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest or other amounts payable in respect of the loan; and

(c) the loan is geared towards stimulating economic growth in a county government.

(4) To enable Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection (3), the Cabinet Secretary shall prepare and submit to each of the House of Parliament a paper that—

(a) gives details of the loan that is proposed to be guaranteed, including the amount of the loan, the terms of repayment, and the details of the interest or any other amount payable under the loan;

(b) specifies the national government's total contingent liability under guarantees given under this section; and

(c) specifies any other information that the Cabinet Secretary considers relevant.

(5) Notwithstanding the provisions of subsection (2) (c), the Cabinet Secretary may guarantee credit which is extended to a private borrower, for enterprise development or such other purpose as the Cabinet Secretary may prescribe, where the borrower does not have sufficient security.

(6) The Cabinet Secretary may only guarantee credit which is extended to a borrower under subsection (5), if the borrower—

(a) is a micro, small or medium enterprise;

(b) is registered as a business or company under the relevant laws;

(c) is a registered taxpayer and is in compliance with the relevant tax laws;

(d) is registered by a county government and holds a valid business permit or trade licence;

(e) is not part of any group or related to any enterprise which would otherwise not be eligible for credit guarantee under this section; and

(f) agrees in writing to comply with the provisions of this Act and any conditions that may be imposed by the Cabinet Secretary.

(7) A guarantee for credit extended to a micro, small or medium enterprise under subsection (5) shall be for a portion of the credit.

(8) A guarantee for credit extended to a micro, small or medium enterprises shall be given under a scheme established by the Cabinet Secretary for the partial mitigation of default risks for credit extended to micro, small or medium enterprises.

(9) The Cabinet Secretary shall prescribe regulations for the operation of the scheme under subsection (8) which shall, provide for the following—

(a) the institutions that shall be eligible to extend credit to micro, small or medium enterprises for which guarantees may be given under subsection (5);

(b) enterprises that shall be eligible to be given a guarantee under subsection (5);

(c) the conditions for a grant of guarantee for credit extended to a micro, small or medium enterprise under subsection (5);

(d) the proportion of security for the credit that a micro, small or medium enterprise shall provide before being granted a guarantee under subsection (5);

(e) the types of credit extended to micro, small or medium enterprises that shall be eligible for guarantees under subsection (5);

(f) the periods for which guarantees for credit to micro, small and medium enterprises shall be applicable;

(g) the circumstances under which a credit guarantee shall be liquidated or varied if a borrower defaults on credit that was guaranteed under subsection (5);

(h) the maximum percentage of the Scheme funds which may be used to guarantee any individual borrower;

(i) mechanisms to ease access to credit guarantees by enterprises owned by women, youth and persons with disabilities;

(j) mechanisms for recovering the money from the borrower where the credit guarantee is liquidated;

(k) a limit on the period of default to a maximum of six months; and

(l) any other relevant matter.

[Act No. 16 of 2020, s. 4.]

59. Cabinet Secretary to submit a statement on loan guarantee to Parliament

Not later than fourteen days after the guarantee is entered into, the Cabinet Secretary shall submit to Parliament and publish a statement—

(a) stating that a guarantee is entered into; and

(b) containing details of—

(i) the guarantee, including the name and other particulars of the borrower whose loan is guaranteed;

(ii) the duration and nature of the guarantee;

(iii) a risk assessment in respect of the guarantee; and

(iv) any other information prescribed by regulations for the purposes of this subsection.

59A. Cabinet Secretary to submit a report on credit guarantees to micro, small and medium enterprises to Parliament

(1) The Cabinet Secretary shall prepare a statement of the credit guarantees granted under section 58(5) and a summary thereon in such detail as the Cabinet Secretary may determine.

(2) The Cabinet Secretary shall, at least once in every year, submit to Parliament the summary prepared under subsection (1) together with a report of—

(a) the total value of credit guarantees given during that period;

(b) the total value of credit guarantees liquidated during that period;

(c) the total value of outstanding credit guarantees on the date of the report;

(d) the risk assessment of the credit guarantees or classes of guarantees;

(e) information on the total value of credit guarantees, disaggregated into the number of enterprises owned by women, youth and persons with disabilities which have been guaranteed;

(f) information on the total value of credit guarantees, disaggregated into the number of micro, small and medium enterprises guaranteed and by the respective regions; and

(g) any other relevant information prescribed by regulations for the purposes of this section.

[Act No. 16 of 2020, s. 5.]

60. Money payable in respect of a guarantee to be a charge on the Consolidated Fund

(1) Subject to subsection (2), money payable on a guarantee is a charge on, and is payable out of, the Consolidated Fund without further appropriation than this section.

(2) Money payable on a guarantee shall be paid only if the payment has been authorised by the Controller of Budget.

(3) Where money is paid out of the Consolidated Fund on a guarantee, the Cabinet Secretary shall submit a report to Parliament giving details of the payment.

(4) The Cabinet Secretary shall include in the report made under subsection (3)—

(a) details of the guarantee;

(b) the circumstances giving rise to the payment;

(c) reasons why the borrower failed to pay; and

(d) such further information as the Cabinet Secretary may consider relevant.

61. Recovery of amounts paid on a guarantee

(1) Money paid by the Cabinet Secretary' on a guarantee, including any expenses incurred by the Cabinet Secretary in respect of the guarantee, shall—

(a) be a debt due to the national government from the borrower whose loan was guaranteed; and

(b) be recoverable from the borrower as a debt due to the national government by—

(i) proceedings brought in a court of competent jurisdiction; or

(ii) withholding a transfer of money in terms of Article 225 of the Constitution, if the borrower receives appropriations.

(2) Where Cabinet considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over a period of time, the Cabinet Secretary may enter into an agreement with the borrower to pay the debt over that period and at such intervals, and subject to such terms and conditions, as may be specified in the agreement.

(3) The Cabinet Secretary shall not impose terms and conditions in an agreement under subsection (2) which are inconsistent with the terms and conditions specified in the guarantee document.

(4) Where the Cabinet Secretary enters into an agreement under subsection (2), no proceedings under subsection (1)(b) shall be taken unless the borrower defaults under the agreement.

(5) The Cabinet Secretary shall ensure that any money received or recovered from a borrower in respect of money paid under a guarantee entered into under this section is paid into the Consolidated Fund.

The Public Debt Management Office

62. Establishment and objectives of the Public Debt Management Office

(1) There is established an office to be known as the Public Debt Management Office within the National Treasury.

(2) The Head of the Public Debt Management Office shall be recruited through a competitive process by the Public Service Commission.

(3) The objectives of the Public Debt Management Office shall be to—

(a) minimise the cost of public debt management and borrowing over the long-term taking account of risk;

(b) promote the development of the market institutions for Government debt securities; and

(c) ensure the sharing of the benefits and costs of public debt between the current and future generations.

63. Functions of the Public Debt Management Office

The functions of the Public Debt Management Office shall include—

(a) carrying out the government's debt management policy of minimising its financing cost over the long-term taking account of risk;

(b) maintaining a reliable debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government;

(c) prepare and update the annual medium-term debt management strategy including debt sustainability analysis;

(d) prepare and implement the national government borrowing plan including servicing of outstanding debts;

(e) acting as the principal in the issuance of Government debt securities on behalf of the National Treasury;

(f) monitor and evaluate all borrowing and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy;

(g) process the issuance of loan guarantees including assessment and management of risks in national government guarantees.

(h) transact in derivative financial instruments in accordance with best international practices benchmarked to the debt management offices of other governments that are internationally respected for their practices.

64. Role of Cabinet Secretary in Public Debt Management Office

(1) The Cabinet Secretary shall—

(a) develop the policy and financial framework in accordance with Constitutional principles within which the Public Debt Management Office operates;

(b) delegate to the Head of the Public Debt Management Office the operational decisions on borrowing and debt management and the day-to-day management of the Office;

(c) ensure that the Public Debt Management Office has the resources and skills to manage the debt and borrowing according to international best practices for liability management; and

(d) be accountable to Parliament for the work of the Public Debt Management Office.

(2) The Public Debt Management Office shall prepare and submit to the Cabinet Secretary and the Commission on Revenue Allocation the following reports—

(a) the Medium Term Debt Management Strategy consistent with the Budget Policy Statement;

(b) the government borrowing plan for the approved Annual Budget;

(c) the statistical and analytical reports on debt and borrowing; and

(d) the annual performance reports of the Public Debt Management Office.

(3) The reports referred to in subsection (2) shall be published and publicised and a copy of each sent to each county government.

(4) The Public Debt Management Office may appoint agents to provide technical advice or undertake administrative functions for the management of debts provided that control and accountability for these functions remain with the Cabinet Secretary.

65. Relationship with county treasuries in debt management

(1) At the request of a County Treasury, the Public Debt Management Office shall assist the county government in its debt management and borrowing.

(2) At the request of the Public Debt Management Office, the County Treasury shall supply the Public Debt Management Office with any information that shall enable it to execute its mandate efficiently.

The Judiciary, Parliament, Constitutional Commissions and Independent Offices

66. Accounting officers of Judiciary, Parliament, constitutional commissions and independent offices

Subject to the Constitution, the accounting officers of the Judiciary, Parliamentary Service Commission, constitutional commissions and independent offices shall monitor, evaluate and oversee the management of public finances in their respective entities, including—

(a) the promotion and enforcement of transparency, effective management and accountability with regard to the use of public finances;

(b) ensuring that accounting standards are applied;

(c) the implementation of financial policies in relation to public finances;

(d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;

(e) the preparation of annual estimates of expenditures;

(f) acting as custodian of the entity's assets, except where provided otherwise by any other legislation or the Constitution;

(g) monitoring the management of public finances and their financial performance;

(h) making quarterly reports to the National Assembly on the implementation of their budget; and

(i) taking such other actions, not inconsistent with the Constitution, as shall further the implementation of this Act.

[Act No. 38 of 2016, s. 58.]

Responsibilities of the accounting officers of the national government and the national government entities

67. Designation of accounting officers for national government

(1) The Cabinet Secretary, except as otherwise provided by law, shall in writing designate accounting officers to be responsible for the proper management of the finances of the different national government entities as may be specified in the different designations.

(2) Except as otherwise stated in other legislation, the person responsible for the administration of a Constitutional Commission or institution or Independent Office shall be the accounting officer responsible for managing the finances of that Commission, institution or Independent Office.

(3) The Cabinet Secretary shall ensure that at any time there is an accounting officer in each national government entity.

68. Responsibilities of accounting officers for national government entities, Parliament and the Judiciary

(1) An accounting officer for a national government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is—

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.

(2) In the performance of a function under subsection (1), an accounting officer shall—

(a) ensure that all expenditure made by the entity complies with subsection (1);

(b) ensure that the entity keeps financial and accounting records that comply with this Act;

(c) ensure that all financial and accounting records the entity keeps in any form, including in electronic form are adequately protected and backed up;

(d) ensure that all contracts entered into by the entity are lawful and are complied with;

(e) ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance;

(f) bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the accounting officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

(g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and fiscal policy objectives of the national government;

(h) prepare estimates of expenditure and revenues of the entity in conformity with the strategic plan referred to in paragraph (g);

(i) submit the estimates of the public entity which is not a state corporation to the Cabinet Secretary;

(j) submit the estimates of a public entity which is a state corporation to the Cabinet Secretary responsible for that state corporation who, after approving it, shall forward it to the Cabinet Secretary;

(k) prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Controller of Budget and the Auditor-General for audit, and in the case of a national government entity, forward a copy to the National Treasury;

(l) take appropriate measures to resolve any issues arising from audit which may remain outstanding;

(m) provide information on any fraud, losses, or any violation of subsection (1) and explanation for the actions taken to prevent a similar problem in future;

(n) provide the National Treasury and any other office, where relevant, with any information it may require to fulfil its functions under this Act; and

(o) in case of a national government entity, carry out such other functions as may be specified by the Cabinet Secretary.

(3) If the concerns referred to in subsection (2)(f) are not adequately addressed by the Cabinet Secretary or the Chief Justice or the Speaker of the National Assembly, the accounting officer shall bring those concerns to the attention of Parliament.

(4) Not later than three months after the National Assembly has adopted a report by a relevant committee of the National Assembly in respect of a report submitted by the Controller of Budget under Article 228(6) of the Constitution, an accounting officer shall—

(a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the National Assembly; and

(b) submit the report to the National Assembly and in case of a national government entity, copy to the National Treasury and the Controller of Budget.

(5) A report referred to in subsection (4) shall be published and publicised.

69. Accounting officer of a national government entity may write-off loss

(1) An accounting officer for a national government entity may write-off any loss not exceeding a prescribed amount, and in circumstances prescribed by regulations for the purposes of this section.

(2) An accounting officer for a national government entity, may with the approval of the Cabinet Secretary, write off a loss exceeding the amount referred to in subsection (1) but not exceeding a further amount and in circumstances prescribed by regulations.

(3) The Cabinet Secretary may, with the approval of Cabinet, authorise an accounting officer to writeoff a loss exceeding the amount referred to in subsection (2).

(4) An accounting officer for a national government entity shall maintain a record of any losses that are written off during a financial year and shall include the record in the entity's financial statements for that year.

70. Spending authority of accounting officer

If a national government entity has expenditures that are charged on the Consolidated Fund under the Constitution or an Act of Parliament, the accounting officer has the authority to spend the money in accordance with the purposes specified in legislation without an appropriation.

71. Accounting officer for national government entity may make cash advances

(1) An accounting officer for a national government entity may authorise payment of cash advances to public officers to enable them make payments for the entity or in the course of their duties.

(2) A public officer to whom cash advance is made under subsection (1), shall account for the advance within a reasonable period.

(3) A public officer to whom cash advance has been made under subsection (1), shall return the balance of the cash advanced together with signed supporting documents for the expenditure incurred in accordance with any requirement set out in any of the following—

(a) the documents used to apply for or authorise the advance;

(b) regulations prescribed for the purpose of this section; and

(c) any written notice given to the officer by the accounting officer.

(4) If a public officer to whom cash advance is made under subsection (1) fails to account for the advance, or fails to return it as required by subsection (3)—

(a) the amount of the advance not accounted for or not returned becomes a debt owed by the officer;

(b) the debt becomes subject to the payment of interest at a rate prescribed by regulations for the purpose of this subsection; and

(c) the debt, including the interest on it, is recoverable by that entity by making a deduction from any salary or other amount that is payable to the officer.

72. Accounting officer to manage assets and liabilities of national government entities

(1) The accounting officer for a national government entity shall—

(a) be responsible for the management of the entity's assets and liabilities; and

(b) manage those assets in a way which ensures that the national government entity achieves value for money in acquiring, using and disposing of those assets.

(2) The accounting officer for a national government entity may dispose of assets only in accordance with an Act of Parliament pursuant to Article 227 of the Constitution and shall ensure that the proceeds from all asset disposals are deposited into a bank account of the entity.

(3) A national government entity shall not loan or transfer assets to any person or organisation or permit any person or organisation to use assets for purposes other than carrying out the functions of the entity, except in accordance with an Act of Parliament enacted pursuant to Article 227 of the Constitution.

(4) Regulations may provide for the management and disposal of Government assets and for the monitoring of the management and disposal of those assets by national government entities in accordance with an Act of Parliament enacted pursuant to Article 227 of the Constitution.

73. National government entity to maintain internal auditing arrangements

(1) Every national government entity shall ensure that it complies with this Act and—

(a) has appropriate arrangements in place for conducting internal audit according to the guidelines of the Accounting Standards Board; and

(b) where any regulations are in force under subsection (2), those regulations are complied with.

(2) Regulations may prescribe requirements to be complied with in conducting internal audits.

(3) The Internal Auditor-General Department of the National Treasury shall ensure that its arrangements for conducting internal auditing include—

(a) reviewing the governance mechanisms of the entity and mechanisms for transparency and accountability with regard to the finances and assets of the entity;

(b) conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity;

(c) verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;

(d) providing assurance that appropriate institutional policies and procedures and good business practices are followed by the entity; and

(e) evaluating the adequacy and reliability of information available to management for making decisions with regard to the entity and its operations.

(4) A national government entity shall ensure that internal audits in respect of the entity are conducted in accordance with international best practices.

(5) Every national government public entity shall establish an audit committee whose composition and functions shall be as prescribed by the regulations.

74. Disciplinary measures against public and accounting officers

(1) Subject to the Constitution, the Public Officers Ethics Act (Cap. 185B) and the Public Service codes of ethics or any other relevant laws, if an accounting officer reasonably believes that a public officer employed by a national government entity is engaging in, or has engaged in improper conduct within the meaning of subsection (4) in relation to the resources of the entity, the accounting officer shall—

(a) take appropriate measures to discipline the public officer in accordance with regulations; or

(b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that public officer.

(2) If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall—

(a) take such measures as may be provided in regulations; or

(b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.

(3) The measures referred to in subsection (2)(a) include revoking the position as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer—

(a) contravenes or fails to comply with this Act, including their accounting responsibilities;

(b) undermines any financial management procedures or controls that apply to the entity;

(c) makes or permits expenditure that is unlawful or has not been authorised by the entity; or

(d) fails, without reasonable excuse, to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1)(a) or (2)(a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct.

Receivers and collectors of national government revenue

75. Receivers and collectors of national government

(1) The Cabinet Secretary shall, in writing, designate persons as receivers of national government revenue under Article 209(1), (2) and (4) of the Constitution and who shall be responsible for receiving and accounting for such national government revenue provided in any law or in regulations as the Cabinet Secretary may specify in the letter of appointment.

(2) A receiver of national government revenue is responsible to the Cabinet Secretary for the collection of revenue for which he or she is responsible and such revenue shall be separately accounted for in accordance with Articles 206(1) and 209(1), (2) and (4) of the Constitution.

76. Receiver may authorise a public officer to be collector of national government revenue

(1) A receiver of the national government revenue may authorise a public officer employed by the national government or any of its entities to be a collector of revenue for the national government and remit it to the receiver.

(2) Any public officer, other than a receiver or collector of revenue for the national government, who collects revenue for that national government shall, not later than three days after receiving it, deliver the revenue to a receiver or collector of revenue for the national government.

(3) A receiver of revenue for the national government shall provide monthly statements to the National Treasury and the Commission on Revenue Allocation.

77. Powers of the Cabinet Secretary to waive or vary tax, fees or charges

The Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations provided that—

(a) the National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of this Act;

(b) such a waiver or variation has been authorised by an Act of Parliament; and

(c) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer.

78. Kenya Revenue Authority to be collector of national government revenue

The Kenya Revenue Authority, shall be the collector of national government revenue for the purposes of this Part.

Obligations of public officers

79. Public officers to comply with laws relating to national government resources

(1) Every public officer employed in a national government state organ or public entity shall comply with the Constitution and all laws relating to the conduct of public officers when carrying out a responsibility or exercising a power under this Act.

(2) Without prejudice to provisions under subsection (1), a public officer employed in a national government state organ or public entity shall—

(a) comply with the provisions of this Act so far as they are applicable to the officer; and

(b) ensure that the resources within the officer's area of responsibility are used in a way which—

(i) is lawful and authorised; and

(ii) is effective, efficient, economical and transparent;

(c) within the officer's area of responsibility—

(i) ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property; and

(ii) use the officer's best efforts to prevent any damage from being done to the financial interests of the national government.

Financial reporting by the National Treasury and national government entities

80. The National Treasury to prepare consolidated annual financial statement

(1) At the end of each financial year, the National Treasury shall prepare for the national government, clear and comprehensible annual financial statements that consolidate the financial statements prepared by all national government entities, in accordance with formats prescribed by the Accounting Standards Board.

(2) The National Treasury shall include in the consolidated financial statements—

(a) a statement of all monies paid into and out of the National Exchequer Account;

(b) a summary of—

(i) the appropriation accounts and statements prepared by accounting officers under section 81; and

(ii) the statements prepared by receivers of revenue under section 82;

(c) a statement of payments made out of the National Exchequer Account that are authorised by legislation other than an Appropriation Act;

(d) a statement of the total amount of debt of national government that is outstanding at the end of the financial year;

(e) a statement of any waivers under Article 210 of the Constitution; and

(f) such other statements as the National Assembly may require.

(3) The National Treasury shall ensure that the statements and summaries referred to in subsection (2) are in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board.

(4) Not later than four months after the end of the financial year, the National Treasury shall—

(a) submit the financial statements and summaries referred to in subsection (1) to the Auditor-General and a copy to the Controller of Budget and the Commission on Revenue Allocation; and

(b) publish and publicise the statements.

81. Annual reporting by accounting officers

(1) At the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect of the entity.

(2) The accounting officer shall include in the financial statement—

(a) appropriation accounts, showing—

(i) the services for which the appropriated money was spent;

(ii) the actual amount spent on each service;

(iii) the status of each vote compared with the appropriation for the vote;

(iv) a statement explaining any variations between the actual expenditure and the sums voted; and

(v) any other information specified by the National Treasury;

(b) a statement of the entity's debt which is outstanding at the end of the financial year;

(c) a statement of the entity's debt guaranteed by the national government as at the end of the financial year;

(d) a statement of the entity's assets and liabilities as at the end of the financial year in respect of the recurrent Vote, development Vote and funds and deposits;

(e) a statement of the accounting policies followed in preparing the financial statement; and

(f) a statement of the national government entity's performance against predetermined objectives.

(3) The accounting officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Not later than three months after the end of each financial year, the accounting officer for the entity shall—

(a) submit the entity's financial statements to the Auditor-General and a copy of the statement to the Controller of Budget, the National Treasury and the Commission on Revenue Allocation; and

(b) publish and publicise the financial statements.

(5) In the case of an entity that is a state corporation, the accounting officer shall submit the corporation's financial statements to the Cabinet Secretary responsible for matters relating to that corporation who shall, upon approving it submit a copy to the Cabinet Secretary.

82. Annual reporting by receivers of revenue

(1) At the end of each financial year, a receiver of revenue for the national government shall prepare an account in respect of the revenue received and collected by the receiver during that financial year.

(2) An account prepared under subsection (1) shall include—

(a) a statement of receipts and disbursements in such form as the National Treasury may direct; and

(b) a statement of arrears of revenue.

(3) Not later than three months after the end of the financial year, the receiver of revenue for the national government shall—

(a) submit the accounts to the Auditor-General and a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation; and

(b) publish and publicise the financial statements.

(4) Not later than three months after the end of each financial year, a receiver of revenue for the national government shall submit to the Auditor-General a report with respect to all waivers and variations of taxes, fees or charges granted by the receiver or collector during that year.

(5) The receiver shall include in the report under subsection (4) the following details in respect of each waiver or variation—

(a) the full name of each person benefitting from the waiver or variation;

(b) the amount of tax, fee or charge affected by the waiver or variation;

(c) the year to which the waiver or variation relates;

(d) the reasons for waive or variation; and

(e) the law in terms of which the waiver was granted.

(6) The reports referred to in subsection (4) shall be published and publicised.

83. Accounting officer to prepare quarterly reports for national government entity

(1) An accounting officer for a national government entity shall prepare a report for each quarter of the financial year in respect of the entity.

(2) In preparing a quarterly report for a national government entity, the accounting officer shall ensure that the report—

(a) contains information on the financial and non-financial performance of the entity; and

(b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

(3) Not later than fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the Cabinet Secretary responsible for the entity and the National Treasury.

(4) The Cabinet Secretary responsible for an entity shall forward a copy of the report to the Cabinet Secretary and Controller of Budget.

(5) Not later than forty five days after the end of each quarter, the National Treasury shall—

(a) consolidate the quarterly reports and submit them to the National Assembly with copies of the reports to the Controller of Budget, Auditor-General and the Commission on Revenue Allocation; and

(b) publish and publicise the reports.

(6) In the case of an entity that is a state corporation, the accounting officer for the corporation shall submit the quarterly report to the Cabinet Secretary responsible for the corporation who shall, upon approving it, forward a copy to the Cabinet Secretary.

84. Administrators of national public funds to prepare annual financial statements

(1) The administrator of a national public fund established by the Constitution or an Act of Parliament shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

(2) In preparing a financial statement for a national public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the national public fund.

(3) Not later than three months after the end of each financial year, the administrator of a national public fund shall submit the financial statements prepared under this section to the Auditor-General.

(4) The administrator shall submit a copy of the report to the Cabinet Secretary responsible for the fund.

85. Quarterly reporting by administrators of national public funds

The administrator of a national public fund established by the Constitution or an Act of Parliament shall prepare quarterly financial statements for the national public fund in a form prescribed by the Accounting Standards Board.

Establishment and dissolution of state corporations and additional requirements for state corporations and government-linked corporations

86. Establishment and dissolution of a state corporation

(1) A state corporation may be established or dissolved only with the prior approval of the Cabinet, which approval may be given only after taking into account any recommendations made by the National Treasury regarding the financial implications of establishing or dissolving the corporation.

(2) Regulations shall prescribe the criteria to be used in establishing or dissolving state corporations and the regulations shall be tabled in Parliament for approval.

87. Restrictions on national government investing in government-linked corporations

The national government or national government entity may not invest—

(a) in a state corporation; or

(b) in a government-linked company,

without the prior approval of the Cabinet, which approval may be given only after taking into account any recommendations of the National Treasury regarding the financial implications of the investment.

88. Cabinet Secretary in charge of state corporation to monitor its performance

(1) The respective Cabinet Secretary responsible for matters relating to a state corporation is responsible for monitoring—

(a) the financial performance of that state corporation and government-linked corporations; and

(b) the performance of that state corporation and the activities affecting its financial performance; and

reporting to the Cabinet on the financial performance of the state corporation.

(2) The Cabinet Secretary shall—

(a) analyse financial and other reports that are required to be prepared by a state corporation under the State Corporations Act (Cap. 446) or any other relevant Act;

(b) report to the Cabinet on the financial performance of those state corporations; and

(c) make recommendations to the Cabinet as to how a particular state corporation or government-linked corporation could improve its financial performance.

89. Annual reporting by the Cabinet Secretary responsible for matters relating to public investments

(1) The Cabinet Secretary responsible for matters relating to public investments shall prepare and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarising the extent of national government involvement or investment in, or funding of, all state corporations and government-linked corporations for that financial year.

(2) The report under subsection (1) shall include information on—

(a) the date of incorporation and objects of the corporation;

(b) the amount of national government shareholding, directly or indirectly, in the state corporation;

(c) any changes in the shareholding of the state corporation during the financial year;

(d) the amount of any funding in the form of grants or subsidies provided by the national government to the state corporation or government-linked state corporations, excluding profit-making state corporation, during the financial year;

(e) the amount of any loans made by the national government to the state corporation, and the amount of any guarantees issued by the national government in respect of the state corporation, during the financial year;

(f) the cumulative amount of undischarged loans and guarantees in respect of the state corporation;

(g) the amount of the profit or loss of the state corporation for the financial year;

(h) the amount of any revenue received by the national government from the state corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the state corporation;

(i) the amount of payments made, or losses incurred, by the national government to meet contingent liabilities as a result of loans or guarantees during the financial year, including payments made in respect of guarantees, loan write-offs or waiver of interest on loans; and

(j) an assessment of the financial and related non-financial performance of the state corporation for the financial year.

(3) Once every three years, the Cabinet Secretary responsible for matters relating to public investments shall prepare a report on the assessment of the national government's continued involvement or investment in, or funding of, the state corporation or government linked corporation.

(4) The Cabinet Secretary responsible for matters relating to public investments shall submit copies of the reports referred to in subsections (2) and (3) to the Cabinet Secretary, the Controller of Budget, the Commission on Revenue Allocation and to the Auditor-General.

90. Parliament may extend time limit

Any House of Parliament may, by resolution, extend the time limit, other than a time limit set in the Constitution, for submitting a statement or other document required to be submitted to it under this Act.

91. Definitions for purposes of sections 86, 87, 88 and 89

For the purposes of sections 86, 87, 88 and 89—

(a) **"government-linked corporation"** means a corporation in which the national government or national government entity is a shareholder with less than fifty percent of the share capital of the corporation; and

(b) **"invest"** means any form of funding provided to a state corporation, including providing share capital, loans, guarantees, grants or subsidies.

Resolution of operational and financial problems of national government entities and county governments

92. Responsibility for avoiding, identifying and resolving financial problems

(1) A State organ or other public entity is primarily responsible for foreseeing, identifying, avoiding and resolving financial problems in that State organ or public entity.

(2) A State organ or other public entity shall ensure that the conduct of financial management is in accordance with the Constitution and this Act.

(3) If a State organ or other public entity encounters a serious financial problem or anticipates serious challenges in performing its financial function or meeting its financial commitments, it shall immediately—

(a) seek solutions to resolve the financial problems;

(b) notify the Cabinet Secretary or the County Executive Committee member for finance where the State organ is a county government organ;

(c) notify the Controller of Budget and the Commission on Revenue Allocation; and

(d) inform the Intergovernmental Budget and Economic Council, of the nature of the financial problem and proposed remedial measures it proposes to put in place.

93. Assessment of the need for intervention in accordance with Article 225 of the Constitution

(1) If the Cabinet Secretary becomes aware of financial problems in a State organ or other public entity, the Cabinet Secretary shall promptly—

(a) ascertain the seriousness of the problem and the proposed remedial measures or solution to the financial problem by the State organ or public entity; and

(b) determine whether the situation constitutes a serious material breach or persistent material breach requiring stopping of transfer of funds under Article 225(3) of the Constitution.

(2) In the case of a State organ which is a national government entity, if the financial problem has been caused by or resulted in a failure by the national government entity—

(a) to perform its functions of comply with obligations imposed under the Constitution or any other Act; or

(b) to meet its financial commitments, the Cabinet Secretary shall, guided by regulations, consider whether or not to take action under Article 225(3) of the Constitution and in terms of this Act.

(3) In the case of a State organ which is a county government or county government entity, if it—

(a) does not operate a financial management system that complies with the requirements prescribed in this Act and the financial problem has met conditions for intervention in terms of Article 190(3) of the Constitution; or

(b) is unable to meet its financial commitments as set out in the Constitution or this Act, this shall constitute a serious material breach or persistent material breach for purposes of stopping transfer of funds under Article 225(3) of the Constitution.

(4) When determining whether the conditions for the Cabinet Secretary to stop transfer of funds referred to in Article 225(3) of the Constitution are met, all relevant facts shall be considered before the Cabinet Secretary acts.

94. Additional indicators of serious or persistent material breach

(1) The following factors, singly or in combination, may further indicate that a State organ or public entity is in serious material breach or persistent material breach of the measures established under this Act—

(a) the State organ or public entity—

(i) has failed to make any payments as and when due;

(ii) has defaulted on financial obligations for financial reasons;

(iii) had an operating deficit in excess of a percentage of revenue in the most recent financial year for which financial information is available as prescribed in regulations; or

(iv) is more than sixty days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation;

(b) the State organ or public entity has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two percent of the State organ's or public entity's budgeted operating expenditure;

(c) the Controller of Budget has raised material issues in their quarterly report;

(d) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the State organ or public entity or has issued an opinion which identifies a serious financial problem in the State organ or public entity; or

(e) recurring or continuous failure by a State organ or public entity to meet its financial commitments which substantially impairs the State organ's or public entity's ability to procure goods, services or credit on usual commercial terms.

(2) Provisions of this sections shall not apply with respect—

(a) disputed obligations which are subject to litigation in a court of law, provided such litigation is not instituted to avoid an intervention; or

(b) obligations explicitly waived by creditors.

95. Stoppage of funds process in national government entity

Where the Cabinet Secretary finds a State organ which is a national government entity to be in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary shall—

(a) determine the reasons for the breach; and

(b) assess the national government entity's financial state.

96. Stoppage of funds process in county government

(1) Where the. Cabinet Secretary finds a State organ which is a county government entity to be in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary shall, in accordance with Article 225 of the Constitution, immediately stop the transfer of funds.

(2) Within seven days of stopping the transfer of funds under subsection (1), the Cabinet Secretary shall inform—

(a) the accounting officer, of the State organ or public entity; or

(b) the Cabinet Secretary responsible for matters relating to intergovernmental relations;

(c) County Executive Committee member responsible for finance;

(d) the Controller of Budget;

(e) the Commission on Revenue Allocation; and

(f) Intergovernmental Budget and Economic Council.

(3) The Cabinet Secretary shall in the alternative promptly—

(a) inform the County Executive Committee member responsible for finance; and

(b) request the Auditor-General to—

(i) determine the reasons for the breach;

(ii) assess the county government financial state; and

(iii) submit to the Cabinet Secretary and County Executive member for finance a report within thirty days from the date of the request.

(4) The Cabinet Secretary may prescribe regulations in relation to the process of stoppage of transfer of funds.

97. Procedure for stoppage of funds

(1) Where the Cabinet Secretary makes a decision to stop the transfer of funds to a State organ or public entity in accordance with Article 225(3) of the Constitution and provisions of this Act, the Cabinet Secretary shall stop the payment and inform the Controller of Budget in respect of—

(a) the date from when the stoppage of transfer of funds takes effect; and

(b) the nature of serious material breaches, or persistent material breaches, committed by the State organ or public entity.

(2) Not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament.

(3) Within fourteen days after the decision to stop the transfer of funds under subsection (1), the Controller of Budget shall investigate the matter and submit a report to Parliament in accordance with Article 225(7) of the Constitution.

(4) Parliament shall, within thirty days of the decision by the Cabinet Secretary to stop the transfer of funds, approve or renew the decision of the Cabinet Secretary to stop the transfer of funds and the Cabinet Secretary shall abide by the decision of Parliament.

(5) The Cabinet Secretary may not stop the transfer of more than fifty percent of funds due to a county government.

(6) Any person may exercise his or her right to petition Parliament in terms of Article 119 of the Constitution in respect of the action taken to stop the transfer of funds.

98. Renewal of decision to stop funds and termination of stoppage

(1) Where the Cabinet Secretary has applied to Parliament to renew a decision to stop the transfer of funds for a period beyond the sixty days, a time allowed by the Constitution, as soon as practicable but not later than fourteen days after being informed of the decision to renew the period, the Controller of Budget shall prepare a report on the matter to Parliament.

(2) The report referred to in subsection (1) shall provide an independent opinion on findings on details of the material breach or persistent material breaches in such a manner as to allow Parliament to make a decision within thirty days on whether or not to approve the renewal of the decision to stop the transfer of funds.

(3) An intervention based on Article 225(3) of the Constitution and provisions of this Act shall end when—

(a) the serious or persistent material breach in the State organ's or public entity's financial affairs has been resolved;

(b) the State organ's or public entity's ability to meet its obligations to provide basic services or its financial commitments is secured; or

(c) Parliament has declined to renew the Cabinet Secretary's decision to stop transfer of funds.

(4) Where Parliament has not renewed a decision in terms of Article 225(6) of the Constitution to stop the transfer of funds, all funds held during the period of the stoppage shall be released within a period not exceeding fifteen days.

99. Provision for a recovery plan

(1) If as a result of an assessment using criteria provided for under this Act, the Cabinet Secretary determines that there is a serious or persistent material breach or that a county government is unable to perform its functions, the Cabinet Secretary shall—

(a) notify the county government and the Cabinet Secretary responsible for matters relating to intergovernmental relations, of the finding and the intention to intervene;

(b) consult the county governor to obtain the county government's cooperation in the development and implementation of a recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan;

(c) in consultation with the county government, prepare an appropriate recovery plan for the county government; and

(d) notify the Controller of Budget, Senate, the Joint Intergovernmental Technical Committee and the Auditor-General of the findings and the content of the recovery plan.

(2) The approved recovery plan by the Joint Committee shall form the basis for releasing funds withheld during the period of stoppage and the release of subsequent transfers to a state organ or public entity.

(3) The purpose of the recovery plan referred to in subsection (1) shall be to secure the county government's ability to meet its obligations to provide basic services or its financial commitments.

(4) The recovery plan under this section shall—

(a) identify the financial problems;

(b) be designed to place the county government in a sound and sustainable financial condition as quickly as possible;

(c) state the principal objectives of the plan and ways and means for achieving those objectives;

(d) provide budget parameters which bind the county government for a specified period or until stated conditions have been met;

(e) identify specific revenue raising measures that are necessary for financial recovery, including the rates at which tariffs should be set to achieve financial recovery;

(f) set out a specific strategy for addressing the entity's problems, including a strategy for reducing wasteful expenditure and increasing the collection of revenue, as may be necessary;

(g) identify the human resources and the source of those resources;

(h) describe the anticipated time frame for the recovery, and the milestones to be achieved; and

(i) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the entity and actions to be taken by other parties.

(5) In addition to provisions under subsection (4), the recovery plan may—

(a) provide for the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic services;

(b) provide for special measures to prevent unauthorised irregular and wasteful expenditure and other losses; and

(c) identify any actual and potential sources of revenue.

(6) The intervention shall adhere to the values and principles of the Constitution and provisions of any other relevant law.

100. Establishment of the Joint Intergovernmental Technical Committee

(1) There is established a committee to be known as the Joint Intergovernmental Technical Committee thereinafter referred to as "Joint Committee") and shall comprise of—

(a) the Cabinet Secretary;

(b) the Cabinet Secretary responsible for matters relating to intergovernmental relations;

(c) a representative of the county government or county government entity concerned;

(d) a representative of the Intergovernmental Budget and Economic Council; and

(e) a representative of the Commission on Revenue Allocation.

(2) The Joint Committee may invite or enlist any other persons to assist it in performing its functions under this section.

(3) the Joint Committee shall meet at least once every three months to review any action of intervention referred to in this Part, and establish—

(a) the progress on resolving the county government's financial problems and the recovery plan; and

(b) the effectiveness of the recovery plan.

(4) The Joint Committee shall, every four months, submit progress reports and, where appropriate, a final report on the intervention to the Cabinet Secretary, the County Executive Committee member for finance, the relevant county Assembly, the Intergovernmental Budget and Economic Council and the Senate.

101. Termination of intervention

(1) An intervention based on Article 190(3)(b) of the Constitution shall end—

(a) if it is terminated in terms of Article 190(5) of the Constitution where there has been a breach of the procedure prescribed in the regulations approved by the Senate; or

(b) where the Joint Committee is satisfied that the county government is able and willing to fulfil its obligation in terms of legislation or the Constitution that gave rise to the intervention; and

(c) when the Joint Committee determines that the financial problem which caused the failure by the county government to comply with its obligation is resolved; and

(d) when the Joint Committee finds that the county government is operating a financial management system that complies with legislation.

(2) At the end of an intervention, the Joint Committee shall notify—

(a) Parliament;

(b) the relevant County Assembly; and

(c) the Controller of Budget.

(3) The Joint Committee shall publish and publicise the end of the intervention.

Part IV – COUNTY GOVERNMENT RESPONSIBILITIES WITH RESPECT TO MANAGEMENT AND CONTROL OF PUBLIC FINANCE

102. County government responsibilities in public finance

(1) Each county government shall ensure adherence to—

(a) the principles of public finance set out in Chapter Twelve of the Constitution;

(b) the fiscal responsibility principles provided in section 107 under this Act;

(c) national values set out in the Constitution; and

(d) any other requirements of this Act.

(2) The County Executive Committee shall observe principles of collective responsibility in exercising their functions under this Act.

(3) In making decisions a county assembly shall take cognisance of Article 216(2) of the Constitution.

103. Establishment of county treasuries

(1) There is established for each county government, an entity to be known as County Treasury.

(2) The County Treasury shall comprise—

(a) the County Executive Committee member for finance;

(b) the Chief Officer; and

(c) the department or departments of the County Treasury responsible for financial and fiscal matters.

(3) The County Executive Committee member for finance shall be the head of the County Treasury.

Responsibilities and powers of a County Treasury

104. General responsibilities of a County Treasury

(1) Subject to the Constitution, a County Treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the county government including—

(a) developing and implementing financial and economic policies in the county;

(b) preparing the annual budget for the county and co-ordinating the preparation of estimates of revenue and expenditure of the county government;

(c) co-ordinating the implementation of the budget of the county government;

(d) mobilising resources for funding the budgetary requirements of the county government and putting in place mechanisms to raise revenue and resources;

(e) managing the county government's public debt and other obligations and developing a framework of debt control for the county;

(f) consolidating the annual appropriation accounts and other financial statements of the county government in a format determined by the Accounting Standards Board;

(g) acting as custodian of the inventory of the county government's assets except where provided otherwise by other legislation or the Constitution;

(h) ensuring compliance with accounting standards prescribed and published by the Accounting Standards Board from time to time;

(i) ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources;

(j) maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government;

(k) monitoring the county government's entities to ensure compliance with this Act and effective management of their funds, efficiency and transparency and, in particular, proper accountability for the expenditure of those funds;

(l) assisting county government entities in developing their capacity for efficient, effective and transparent financial management, upon request;

(m) providing the National Treasury with information which it may require to carry out its responsibilities under the Constitution and this Act;

(n) issuing circulars with respect to financial matters relating to county government entities;

(o) advising the county government entities, the County Executive Committee and the county assembly on financial matters;

(p) strengthening financial and fiscal relations between the national government and county governments in performing their functions;

(q) reporting regularly to the county assembly on the implementation of the annual county budget; and

(r) taking any other action to further the implementation of this Act in relation to the county.

105. Powers of a County Treasury

(1) A County Treasury has such powers as are necessary to enable it to carry out its functions and responsibilities under this Act including—

(a) with prior notice, access any system of public financial management used by any of the county government entities and the internal controls used to monitor the system;

(b) taking appropriate measures, including the stoppage of funds, to deal with any failure of a county government entity to comply with this Act;

(c) with prior notice, accessing the premises of a county government entity and inspecting all records and other documents relating to the financial affairs of that county government entity, kept by that entity;

(d) requiring county government entities to comply with all applicable norms or standards regarding accounting practices, budget classification systems and other public financial management systems as prescribed by the Accounting Standards Board;

(e) requiring any public officer employed by a county government or county government entity to provide explanations, information and assistance in respect to matters relating to the county government's public finances:

Provided that a person providing the information shall not be liable if at the time of providing the information, that person, in writing, objected to providing such information on grounds that the information may incriminate him or her;

(f) issuing guidelines to accounting officers for the county government entities, or public officers employed by those entities, with respect to the financial affairs of that Government or those entities, and monitoring compliance with those guidelines; and

(g) ensuring that county government entities operate a financial management system that complies with national standards as prescribed by the Accounting Standards Board.

(2) A County Treasury may, in writing, authorise any of its officers to carry out a specified responsibility, or exercise a specified power, on its behalf.

(3) When carrying out a responsibility, or exercising a power, on behalf of a County Treasury, an authorised officer shall, if requested to do so by the person in relation to whom the responsibility or power is being carried out or exercised, produce the officer's authorisation for inspection and failure to comply with such a request invalidates any subsequent action purporting to be taken under the authority of the authorisation.

(4) An authorisation given under subsection (3) remains in force for such period as is specified in it or, if no such period is specified, until it is revoked by the County Treasury concerned.

(5) A County Treasury may, in writing, revoke or vary an authorisation given under subsection (3).

106. Secondment of public officers by a County Treasury to the National Treasury

(1) A County Treasury may, upon the request of the National Treasury, second to the National Treasury such number of officers as may be necessary for the National Treasury to better carry out its responsibilities under this Act.

(2) A public officer seconded to the National Treasury under subsection (1), shall be deemed to be an officer of the National Treasury and shall be subject only to the direction and control of the National Treasury.

107. County Treasury to enforce fiscal responsibility principles

(1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2), and shall not exceed the limits stated in the regulations.

(2) In managing the county government's public finances, the County Treasury shall enforce the following fiscal responsibility principles—

(a) the county government's recurrent expenditure shall not exceed the county government's total revenue;

(b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;

(c) the country government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;

(d) over the medium term, the government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;

(e) the county debt shall be maintained at a sustainable level as approved by county assembly;

(f) the fiscal risks shall be managed prudently; and

(g) a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.

(2A) Pursuant to Articles 201 and 216 of the Constitution and notwithstanding subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government.

(3) For the purposes of subsection (2)(d), short term borrowing shall be restricted to management of cash flows and shall not exceed five percent of the most recent audited county government revenue.

(4) Every county government shall ensure that its level of debt at any particular time does not exceed a percentage of its annual revenue specified in respect of each financial year by a resolution of the county assembly.

(5) The regulations may add to the list of fiscal responsibility principles set out in subsection (2).

[Act No. 15 of 2014, s. 12.]

108. County government deviation from financial objectives

(1) A county government may, with the approval of its county assembly, deviate from the financial objectives in the relevant County Fiscal Strategy Paper, but only on a temporary basis and only if the deviation is required because of a major natural disaster or some other significant unforeseen event.

(2) If there is a change of county government, the new county government may deviate from the financial objectives in a County Fiscal Strategy Paper, but may not deviate from the fiscal responsibility objectives.

(3) The County Treasury shall also provide a report to the county assembly regarding the deviation and its implication and shall include in the report—

(a) information on the reasons and implication for the deviation;

(b) proposals to address the deviation;

(c) the time the deviation is estimated to last; and

(d) the status of development projects initiated by the county government and if any projects have been stopped, the reasons for doing so.

(4) The County Treasury shall publish and publicise the report not later than fifteen days after it has been submitted to the county assembly.

Responsibilities of a County Treasury with respect to County Public Funds

109. Establishment of a County Revenue Fund for each county government

(1) There is established, for each county a County Revenue Fund in accordance with Article 207 of the Constitution.

(2) The County Treasury for each county government shall ensure that all money raised or received by or on behalf of the county government is paid into the County Revenue Fund, except money that—

(a) is excluded front payment into that Fund because of a provision of this Act or another Act of Parliament, and is payable into another county public fund established for a specific purpose;

(b) may, in accordance with other legislation, this Act or County legislation, be retained by the county government entity which received it for the purposes of defraying its expenses; or

(c) is reasonably excluded by an Act of Parliament as provided in Article 207 of the Constitution.

(3) The County Treasury shall administer the County Revenue Fund and ensure that the county government complies with the provisions of Article 207 of the Constitution.

(4) The County Treasury shall—

(a) arrange for the County Revenue Fund to be kept in the Central Bank of Kenya or a bank approved by the County Executive Committee member responsible for finance and shall be kept in an account to be known as the "County Exchequer Account"; and

(b) ensure that all money authorised to be paid by the county government or any of its entities for a public purpose is paid from that account without undue delay.

(5) The County Treasury shall ensure that at no time is the County Exchequer Account overdrawn.

(6) The County Treasury shall obtain the written approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of—

(a) an Act of the county assembly that appropriates money for a public purpose;

(b) an Act of Parliament or county legislation that imposes a charge on that Fund; or

(c) this Act in accordance with sections 134 and 135.

(7) The approval of the Controller of Budget to withdraw money from the County Revenue Fund, together with written instructions from the County Treasury requesting for the withdrawal, is sufficient authority for the approved bank where the County Exchequer Account is held to pay amounts from this account in accordance with the approval and the instructions.

(8) Any unutilised balances in the County Revenue Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established.

(9) Financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget.

110. County Government Executive Committee may establish county government Emergency Fund

(1) A County Executive Committee may, with the approval of the county assembly, establish an emergency fund for the county government under the name "..... County Emergency Fund" and the fund shall consist of money from time to time appropriated by the county assembly to the Fund by an appropriation law.

(2) The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.

111. County Executive Committee member for finance to administer the Emergency Fund

(1) The County Executive Committee member for finance shall administer the county government Emergency Fund for the county government in accordance with a framework and criteria approved by the county assembly.

(2) The County Executive Committee member for finance shall establish and maintain a separate account into which all money appropriated to the Emergency Fund shall be paid.

112. Power of County Executive Committee member to make payments from Emergency Fund

(1) Subject to section 113, the County Executive Committee member for Finance may make payments from the county government's Emergency Fund only if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which there is no legislative authority and shall be in accordance with operational guidelines made under regulations approved by Parliament and the law relating to disaster management.

(2) For the purposes of subsection (1), there is an urgent and unforeseen event for expenditure if the County Executive Committee member for finance, guided by regulations and relevant laws, establishes that—

(a) payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;

(b) payment is meant to alleviate the damage, loss, hardship or suffering which may be caused directly by the event; and

(c) the damage caused by the event is on a small scale and limited to the county.

(3) For the purposes of subsection (1), the unforeseen event is one which—

(a) threatens damage to human life or welfare; or

(b) threatens damage to the environment.

113. Limitation on power of County Executive Committee member for finance to make payments from Emergency Fund

The County Executive Committee member for finance may not, during a financial year, make a payment from the Emergency Fund under section 112 exceeding two per cent of the total county government revenue as shown in that county government's audited financial statements for the previous financial year, except for the first year.

114. County Executive Committee member for finance to seek approval for payments from Emergency Fund

(1) The County Executive Committee member for finance shall seek approval of the county assembly within two months after payment is made from the Emergency Fund.

(2) If the county assembly is not sitting during the period referred to in subsection (1), or soon thereafter, the County Executive Committee member for finance shall seek the approval for the payment within fourteen days after the County Assembly next sits.

(3) As soon as practicable after the county assembly has approved the payment, the County Executive Committee member for finance shall cause a draft of the appropriation Bill to be introduced in the county assembly for the appropriation of the money paid and for the replenishment of the county government's Emergency Fund to the extent of the amount of the payment.

115. County Treasury to submit a report to Auditor-General in respect to Emergency Fund

(1) Where an Emergency Fund has been established for a county government in accordance with section 110, the County Treasury shall, not later than three months after the end of each financial year, prepare and submit to the Auditor-General, financial statements in respect of the Emergency Fund for that year.

(2) The County Treasury shall include in the financial statements made under subsection (1)—

(a) the date and amount of each payment made from that Fund;

(b) the person to whom the payment was made;

(c) the purpose for which the payment was made;

(d) whether the person to whom the payment was made has spent the money for that purpose, and a statement made to that effect;

(e) if the person to whom the payment has been made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so; and

(f) a statement indicating how the payment conforms to section 112 of this Act.

116. Power to establish other county public funds

(1) A County Executive Committee member for finance may establish other public funds with the approval of the County Executive Committee and the county assembly.

(2) For every county public fund established, the County Executive Committee member for finance shall designate a person responsible for administering that fund.

(3) The administrator of a county public fund shall ensure that the earnings of, or accruals to a county public fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise.

(4) The administrator of a county public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.

(5) The County Executive Committee member for finance may wind up a county public fund with the approval of the county assembly.

(6) On the winding up of a county public fund—

(a) the administrator of the fund shall pay any amount remaining in the fund into the County Exchequer Account; and

(b) the County Executive Committee member for finance shall, with the approval of the county assembly, pay any deficit in the fund from the County Exchequer Account.

(7) The administrator of a county public fund shall—

(a) prepare accounts for the fund for each financial year;

(b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and

(c) present the financial statements to the county assembly.

(8) The administrator of a county public fund shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(9) Regulations may provide for the establishment, management, operation or winding-up of county public funds under this section.

(10) This section does not apply to the County Revenue Fund established under section 109 of this Act.

(11) The funds and usage of money through the funds shall be published and publicised.

(12) In this section—

"administrator", in relation to a county public fund, means a person designated by the County Executive Committee member for finance under subsection (2) to administer the fund;

"County public fund" means a public fund established under subsection (1).

Responsibilities of county government with respect to the County Budget process

117. County Treasury to prepare County Fiscal Strategy Paper

(1) The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the county assembly, by the 28th February of each year.

(2) The County Treasury shall align its County Fiscal Strategy Paper with the national objectives in the Budget Policy Statement.

(3) In preparing the County Fiscal Strategy Paper, the County Treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.

(4) The County Treasury shall include in its County Fiscal Strategy Paper the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term.

(5) In preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of—

(a) the Commission on Revenue Allocation;

(b) the public;

(c) any interested persons or groups; and

(d) any other forum that is established by legislation.

(6) Not later than fourteen days after submitting the County Fiscal Strategy Paper to the county assembly, the county assembly shall consider and may adopt it with or without amendments.

(7) The County Treasury shall consider any recommendations made by the county assembly when finalising the budget proposal for the Financial year concerned.

(8) The County Treasury shall publish and publicise the County Fiscal Strategy Paper within seven days after it has been submitted to the county assembly.

118. County Treasury to prepare a County Budget Review and Outlook Paper

(1) A County Treasury shall—

(a) prepare a County Budget Review and Outlook Paper in respect of the county for each financial year; and

(b) submit the paper to the County Executive Committee by the 30th September of that year.

(2) In preparing its county Budget Review and Outlook Paper, the County Treasury shall specify—

(a) the details of the actual fiscal performance in the previous year compared to the budget appropriation for that year;

(b) the updated economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent County Fiscal Strategy Paper;

(c) information on—

(i) any changes in the forecasts compared with the County Fiscal Strategy Paper; or

(ii) how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles, or the financial objectives in the County Fiscal Strategy Paper for that financial year; and

(d) reasons for any deviation from the financial objectives in the County Fiscal Strategy Paper together with proposals to address the deviation and the time estimated for doing so.

(3) The County Executive Committee shall consider the County Budget Review and Outlook Paper with a view to approving it, with or without amendments, within fourteen days after its submission.

(4) Not later than seven days after the County Budget Review and Outlook Paper is approved by the County Executive Committee, the County Treasury shall—

(a) arrange for the Paper to be laid before the County Assembly; and

(b) as soon as practicable after having done so, publish and publicise the Paper.

Other responsibilities of County Treasury

119. Banking arrangements for county government and its entities

(1) The County Treasury is responsible for authorising the opening, operating and closing of bank accounts for the county government and its entities, except as otherwise provided by other legislation and in accordance with regulations made under this Act.

(2) As soon as practicable, each County Treasury shall establish a Treasury Single Account at the Central Bank of Kenya or a bank approved by the County Treasury through which payments of money to and by the various county government entities are to be made.

(3) The Treasury Single Account shall not be operated in a manner that prejudices any entity to which funds have been disbursed.

(4) An accounting officer for a county government entity shall not cause a bank account of the entity to be overdrawn beyond the limit authorised by the County Treasury or a Board of a county government entity, if any.

(5) A County Treasury shall keep complete and current records of all bank accounts for which it is responsible under the Constitution, this Act or any other legislation.

(6) Subject to subsection (3), an accounting officer who authorises the bank account of a county government entity to be overdrawn is liable for the full cost of the overdrawn amount, in addition to any other disciplinary measures that—

(a) the County Executive Committee member for finance may impose under section 156; or

(b) any other relevant authority may impose under the provisions of any other legislation.

120. Management of cash at the county government level

(1) A County Treasury shall manage its cash within a framework established by the county assembly and by regulations.

(2) Every county government entity shall submit an annual cash flow plan and forecasts to the County Treasury in a form and manner directed by County Treasury, and shall send a copy to the Controller of Budget.

(3) The County Treasury may invest subject to any regulations that may be prescribed, any money kept in a bank account of the county government.

(4) Except as otherwise provided by other legislation, the following are payable into the County Exchequer Account—

(a) all interest received from investments made under subsection (3);

(b) all money received from the redemption or maturity of the investments, and from the sale or conversion of securities relating to the investments.

(5) The County Treasury may incur costs, charges and expenses in connection with negotiating, placing, managing, servicing, or converting any investment entered into under subsection (3).

(6) Any costs, charges or expenses incurred under subsection (5) are payable from the County Exchequer Account.

121. Procurement for county government entities

For the purposes of this Act, all procurement of goods and services and disposal of assets, required for the purposes of the county government or a county government entity are to be carried out in accordance with Article 227 of the Constitution and the Public Procurement and Disposal Act (Cap. 412C).

122. County Treasury to maintain record of county government loans

(1) The County Treasury shall maintain a record of all loans made to the county government and make the record available to the county assembly within seven days of request.

(2) The County Treasury shall include in the record under subsection (1), the following information—

(a) the principal of the loan and the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;

(b) the amount of the loan advanced at any particular time;

(c) the principal amount, interest and other charges paid at any particular time; and

(d) the balance of principal, interest and other charges outstanding at any particular time.

(3) The county treasury shall maintain the following additional information with respect to every such loan—

(a) the names of the parties to the loan;

(b) the amount of the loan and the currency in which it is expressed and in which it is repayable;

(c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;

(d) the amount of the loan advanced at the time the report under subsection (3) is submitted;

(e) the purpose for which the loan was used and the perceived benefits of the loan; and

(f) any other information that the county assembly requests.

(4) The County Treasury shall submit both quarterly and annual reports of all loans made to the county government to the county assembly.

123. County Treasury to submit county government debt management strategy to county assembly

(1) On or before the 28th February in each year, the County Treasury shall submit to the county assembly a statement setting out the debt management strategy of the county government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities.

(2) The County Treasury shall include the following information in the statement—

(a) the total stock of debt as at the date of the statement;

(b) the sources of loans made to the county government;

(c) the principal risks associated with those loans;

(d) the assumptions underlying the debt management strategy; and

(e) an analysis of the sustainability of the amount of debt, both actual and potential.

(3) As soon as practicable after the statement has been submitted to the county assembly under this section, the County Executive Committee member for finance shall publish and publicise the statement and submit a copy to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council.

124. County Treasury to provide county assembly with additional reports when required

On being requested to do so by the county assembly, the County Treasury shall prepare and submit to the county assembly a report on any matter relating to its responsibilities within fourteen days of the request.

County government budget process

125. Stages in county government budget process

(1) The budget process for county governments in any financial year shall consist of the following stages—

(a) integrated development planning process which shall include both long term and medium term planning;

(b) planning and establishing financial and economic priorities for the county over the medium term;

(c) making an overall estimation of the county government's revenues and expenditures;

(d) adoption of County Fiscal Strategy Paper;

(e) preparing budget estimates for the county government and submitting estimates to the count) assembly;

(f) approving of the estimates by the county assembly;

(g) enacting an appropriation law and any other laws required to implement the county government's budget;

(h) implementing the county government's budget; and

(i) accounting for, and evaluating, the county government's budgeted revenues and expenditures.

(2) The County Executive Committee member for finance shall ensure that there is public participation in the budget process.

126. County government to prepare development plan

(1) Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution, that includes—

(a) strategic priorities for the medium term that reflect the county government's priorities and plans;

(b) a description of how the county government is responding to changes in the financial and economic environment;

(c) programmes to be delivered with details for each programme of—

(i) the strategic priorities to which the programme will contribute;

(ii) the services or goods to be provided;

(iii) measurable indicators of performance where feasible; and

(iv) the budget allocated to the programme;

(d) payments to be made on behalf of the county government, including details of any grants, benefits and subsidies that are to be paid;

(e) a description of significant capital developments;

(f) a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible;

(g) a summary budget in the format required by regulations; and

(h) such other matters as may be required by the Constitution or this Act.

(2) The County Executive Committee member responsible for planning shall prepare the development plan in accordance with the format prescribed by regulations.

(3) The County Executive Committee member responsible for planning shall, not later than the 1st September in each year, submit the development plan to the county assembly for its approval, and send a copy to the Commission on Revenue Allocation and the National Treasury.

(4) The County Executive Committee member responsible for planning shall publish and publicise the annual development plan within seven days after its submission to the county assembly.

127. County government to prepare cash flow projections

(1) Not later than the 15th June of each financial year, every county government shall prepare an annual cash flow projection for the county for the next financial year, and submit the cash flow projection to the Controller of Budget with copies to the Intergovernmental Budget and Economic Council and the National Treasury.

(2) Regulations shall prescribe the format and content of the annual cash flow projections.

128. County Executive Committee member for finance to manage budget process at county government level

(1) The County Executive Committee member for finance shall manage the budget process for the county.

(2) Not later than the 30th August in each year, the County Executive Committee member for finance shall issue a circular setting out guidelines to be followed by all of the county government's entities in the budget process.

(3) The County Executive Committee member for finance shall include in the circular—

(a) a schedule for preparation of the budget, specifying the key dates by which the various processes are to be completed;

(b) the methodology for the review and projection of revenues and expenditures;

(c) key policy areas and issues to be taken into consideration when preparing the budget;

(d) the procedures to be followed by members of the public who wish to participate in the budget process;

(e) the format in which information and documents relating to the budget are to be submitted;

(f) the information to be in conformity with standard budget classification systems as prescribed by regulations; and

(g) any other information relevant to the budget process.

(4) A county government entity shall comply with the guidelines and, in particular, shall adhere to the key dates specified in the schedule referred to in subsection (3)(a).

129. County Executive Committee member to submit budget estimates and other documents to County Executive Committee for approval

(1) A County Executive Committee member for finance shall submit to the County Executive Committee for its approval—

(a) the budget estimates and other documents supporting the budget of the county government, excluding the county assembly; and

(b) the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

(2) Following approval by the County Executive Committee, the County Executive Committee member for finance shall—

(a) submit to the county assembly the budget estimates, supporting documents, and any other Bills required to implement the budget, except the Finance Bill, by the 30th April in that year; and

(b) ensure that the estimates submitted in subsection (a) are in accordance with the resolutions adopted by county assembly on the County Fiscal Strategy Paper.

(3) Each county assembly clerk shall prepare and submit to the county assembly the budget estimates for the county assembly and a copy shall be submitted to the County Executive Committee member for finance.

(4) The County Executive Committee member for finance shall prepare and present his or her comments on the budget estimates presented by the county assembly clerk.

(5) The County Executive Committee member for finance shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the participants in the process to meet the requirements of the Constitution and this Act.

(6) As soon as is practicable after the budget estimates and other documents have been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicise the documents.

(7) Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the county assembly of the approved estimates.

130. County Executive Committee member for finance to submit budget documents to county assembly

(1) The County Executive Committee member for finance shall submit to the county assembly the following documents in respect of the budget for every financial year—

(a) a budget summary that includes—

(i) a summary of budget policies including revenue, expenditure, debt and deficit financing; and

(ii) an explanation of how the budget relates to the fiscal responsibility principles and the financial objectives;

(iii) a memorandum by the County Executive Committee member for finance explaining how the resolutions adopted by the county assembly on the budget estimates have been taken into account;

(b) budget estimates that include—

(i) a list of all county government entities that are to receive funds appropriated from the budget of the county government;

(ii) estimates of revenue projected from the Equalisation Fund over the medium term;

(iii) all revenue allocations from the national government over the medium term, including conditional and unconditional grants;

(iv) all other estimated revenue by broad economic classification;

(v) all estimated expenditure, by Vote, and by programme, clearly identifying both recurrent and development expenditures;

(vi) information regarding loans made to the county government, including an estimate of principal, interest and other charges to be paid by that county government in the financial year in respect of those loans;

(c) information relating to any payments and liabilities to be made or incurred by the county government for which an appropriation is not included in an Appropriation Act, together with the constitutional or national legislative authority for any such payments or liabilities; and

(d) a statement by the County Executive Committee member for finance specifying the measures taken by the county government to implement any recommendations made by the county assembly with respect to the budget for the previous financial year.

(2) In preparing the annual Appropriation Bill to put before the County Assembly, the County Executive Committee member for finance shall ensure that the expenditure appropriations in the Bill are in a form that-

(a) is accurate, precise, informative and pertinent to budget issues; and

(b) clearly identities the appropriations by Vote and programme.

(3) In preparing the annual appropriation Bill under subsection (2), the county executive committee member responsible for finance shall include, in the allocation to the county assembly any unspent funds that had been appropriated to the county assembly in the immediate preceding financial year.

(4) Where an Appropriation Bill is passed before the beginning of the financial year to which it relates and does not contain unspent funds allocated to the county assembly in the immediate preceding financial year, the county executive committee member for finance shall prepare and submit to the county assembly a Supplementary Appropriation Bill allocating the unspent funds.

(5) A Bill prepared under subsection (4) shall be introduced in the county assembly within two months of the commencement of the financial year.

(6) Failure by the county executive committee member for finance to prepare a Supplementary Appropriation Bill under subsection (4) shall constitute an additional indicator of a serious or persistent material breach under section 94.

[Act No. 9 of 2021, s. 11.]

131. County Assembly to consider budget estimates

(1) The county assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year.

(2) Before the county assembly considers the estimates of revenue and expenditure, the relevant committee of the county assembly shall discuss and review the estimates and make recommendations to the county assembly, and in finalising the recommendations to county assembly, the committee shall take into account the views of the County Executive Committee member for finance and the public on the proposed recommendations.

(3) An amendment to the budget estimates may be made by the county assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if—

(a) any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and

(b) any proposed reduction in expenditure is used to reduce the deficit.

(4) Where a Bill originating from a member of a county assembly proposes amendments after the passing of budget estimates and the Appropriations Bill by the county assembly, the county assembly may proceed in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and ensure—

(a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or

(b) a proposed reduction in expenditure is used to reduce the deficit.

(5) Not later than twenty-one days after the county assembly has approved the budget estimates, the County Treasury shall consolidate the estimates and publish and publicise them.

(6) The County Executive Committee member for finance shall take all reasonably practicable steps to ensure that the approved budget estimates are prepared and published in a form that is clear and easily understood by, and readily accessible to, members of the public.

132. Submission and consideration of the revenue raising measures in the county assembly

(1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.

(2) The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures.

(3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall—

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth; and

(f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(4) The recommendation of the County Executive Committee member for finance shall be included in a report and tabled in the county assembly.

133. Approval of the Finance Bill

Not later than ninety days after passing the Appropriation Bill, the county assembly shall consider and approve the Finance Bill with or without amendments.

134. Action to be taken in case of delay in enacting County Appropriation Bill

(1) Subject to subsection (2), if the County Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, a county assembly may authorise the withdrawal of money from the County Revenue Fund.

(2) Money withdrawn under subsection (1)—

(a) may be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed; and

(b) may not exceed, in total, one-half of the amount included in the estimates of expenditure submitted to the county assembly for that year.

(3) The Speaker of the county assembly shall, within seven days, communicate the authorisation in subsection (1) to the County Executive Committee member for finance.

(4) The money withdrawn under subsection (1) shall be included in the appropriation law, under separate Votes, for the services for which it is withdrawn.

135. County government to submit to county assembly supplementary budget in certain circumstances

(1) A county government may spend money that has not been appropriated if the amount appropriated for any purpose under the County Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or money has been withdrawn from the county government Emergency Fund.

(2) A county government shall submit a supplementary budget in support of the additional expenditure for authority for spending under subsection (1).

(3) In complying with subsection (2), a county government shall describe how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

(4) Except as provided by subsection (5), the approval of the county assembly for any spending under this section shall be sought within two months after the first withdrawal of the money.

(5) If the county assembly is not sitting during the time contemplated in subsection (4), or is sitting but adjourns before approval has been sought, approval shall be sought within fourteen days after it next sits.

(6) When the county assembly has approved spending under subsection (2), a supplementary Appropriation Bill shall be introduced for the appropriation of the money spent.

(7) In any financial year, the county government may not spend under this section more than ten percent of the amount appropriated by the county assembly for that year unless that county assembly has, in special circumstances, approved a higher percentage.

136. Appropriation of money for county government purpose to lapse if unspent

(1) Subject to any other legislation, an appropriation that has not been spent at the end of the financial year for which it was appropriated lapses immediately at the end of that financial year.

(2) If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account but has not been spent, it shall repay the unspent money to the County Exchequer Account and prepare a refund statement which shall be forwarded to the Controller of Budget.

Establishment of Forum for consultation by county governments

137. Establishment of County Budget and Economic Forum for county budget consultation process

(1) As soon as practicable after the commencement of this Act, a county government shall establish a forum to be known as the (Name of the County) County Budget and Economic Forum.

(2) The County Budget and Economic Forum shall consist of—

(a) the Governor of the county who shall be the chairperson;

(b) other members of the county executive committee;

(c) a number of representatives, not being county public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by organisations representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith-based groups at the county level.

(3) The purpose of the Forum is to provide a means for consultation by the county government on—

(a) preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and

(b) matters relating to budgeting, the economy and financial management at the county level.

(4) In addition to the above, consultations shall be in accordance with the consultation process provided in the law relating to county governments.

Responsibilities of County Executive Committee Member for finance and functions of the county government in respect to public finances

138. Conditions for receiving grants and donations by county government or its entities or third parties

(1) In this section and section 139—

(a) "donation" means a gift or a contribution;

(b) "grant" means the provision of financial or other assistance by a development partner which is not repayable and—

(i) where public money is paid to or used by a grant recipient;

(ii) which is intended to finance the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the county government; and

(iii) where the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement;

(c) "grant recipient" means the county government or a county government entity authorised to control or spend money under this Act or an incorporated or unincorporated body not otherwise authorised to control or spend money under this Act;

(d) "intended beneficiaries" means the people of the county whom the projects or public services financed by a grant are intended to benefit;

(e) "third party" means any other person other than a public officer.

(2) Subsections (3) to (9) apply to the county government and county government entities.

(3) A county government or county government entity may receive a grant or donation from a development partner with the approval of the County Executive Committee member for finance and only as provided by this section.

(4) As soon as practicable after receiving the grant or donation, the recipient shall notify the County Executive Committee member for finance and the Cabinet Secretary of the receipt.

(5) Funds received in the form of grants or donations shall only be spent in accordance with Article 224 of the Constitution.

(6) If a project that is being financed by a grant or donation from a development partner requires county government funding, the project may only be started when—

(a) the required funding has been appropriated in accordance with this Act or is otherwise authorised by legislation; or

(b) the County Executive Committee member for finance has given a written authorisation for the project to begin.

(7) The County Executive Committee member for finance shall inform the county assembly of the authorisation given under subsection (6)(b).

(8) The recipient of a grant or donation from a development partner shall record the amount or value of the grant or donation in its books of accounts.

(9) Subject to audit in terms of Article 229(4) of the Constitution, the recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using government—

(a) financial and accounting practices laid down under an Act of Parliament, rules and regulations; and

(b) administrative, accounting and auditing procedures, including financial accounting rules and procedures for accounting for the receipt or expenditure of money specified or referred to, in any agreement between the recipient and the development partner.

139. Regulations on grant administration

(1) Regulations approved by the county assembly shall provide for the administration, control and management of grants, including—

(a) procedures for the allocation and disbursement of grants, including requiring the publication of transparent criteria for the allocation of grants;

(b) requirements for grant agreements binding on grant recipients that specify the terms and conditions to which the grant is subject;

(c) procedures for the budgeting, financial management, accounting and reporting of grants by grants recipients;

(d) procedures under which a third party may be authorised to receive, control or pay public money as a grant; and

(e) measures to ensure that any third party that is authorised to receive, control or pay public money as a grant, or is responsible for any other aspect of administration of a grant, is subject to the same obligations as a public officer under this Act.

(2) Regulations under subsection (1) shall include measures to ensure public disclosure, accountability and participation in relation to grants including—

(a) timely public disclosure to intended beneficiaries of the allocation and disbursement of grants to grant recipients;

(b) timely public disclosure by grant recipients to intended beneficiaries of expenditure and performance achieved in relation to the grant;

(c) measures that allow the intended beneficiaries to participate in the design and management of the projects or public services financed by the grant;

(d) measures that allow the intended beneficiaries to report instances of non-compliance with the regulations or grant agreement;

(e) sanctions that may be imposed on grant recipients in response to instances of non-compliance by one or more grant recipients; and

(f) the obligations of any public officer or third party authorized to receive, control or pay public money as grants.

(3) A third party shall not receive, have custody of, or pay public money otherwise than in accordance with an authorisation given in accordance with regulations made under subsection (1).

(4) A third party who contravenes subsection (3) commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both and shall make good any loss arising from the use of public funds contrary to the law.

140. Authority for borrowing by county governments

(1) A County Executive Committee member for finance may, on behalf of the county government, raise a loan for that Government's purposes, only if the loan and the terms and conditions for the loan are set out in writing and are in accordance with—

(a) Article 212 of the Constitution;

(b) sections 58 and 142 of this Act;

(c) the fiscal responsibility principles and the financial objectives of the county government set out in its most recent County Fiscal Strategy Paper; and

(d) the debt management strategy of the county government over the medium term.

(2) A loan may be raised either within Kenya or outside Kenya.

141. Obligations and restrictions with respect to county government borrowing

(1) In borrowing money, a county government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market that is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) A county government may borrow money only in accordance with this Act or any other legislation and shall not exceed the limit set by the county assembly.

(3) A county government may borrow money in accordance with section 58, and only for purposes that are prescribed by regulations made under this subsection.

(4) A public debt incurred by a county government is a charge on the County Revenue Fund, unless the County Executive Committee member for finance determines that all or part of the public debt that would otherwise be a charge on that Fund shall be a charge on another public fund established by that county government or any of its entities.

(5) The County Executive Committee member for finance shall pay the proceeds of any loan raised under this Act into the County Revenue Fund or into any other public fund established by the county government or as the County Executive Committee member for finance may determine.

(6) A County Executive Committee member for finance may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes of the county government or any of its entities as the County Executive Committee member for finance considers necessary.

(7) A County Executive Committee member for finance may in accordance with national legislation on public procurement and disposal of assets—

(a) appoint advisers, agents and underwriters for the purposes of raising loans; and

(b) enter into agreements with those advisers, agents and underwriters as to the role to be undertaken by them and the remuneration to be paid to them.

(8) Any expenses incurred in connection with borrowing by a county government shall be a charge—

(a) on the County Revenue Fund; or

(b) on such other county public fund established by the county government or any of its entities as the County Executive Committee member for finance may determine in accordance with regulations approved by the county assembly.

(9) The costs, interests and principal payments made by the national government on behalf of the county concerning loans to the county government shall, together with the principal amount, be reimbursed to the national government by the county government.

142. Borrowing by county government entities

(1) The County Assembly may authorise short term borrowing by county government entities for cash management purposes only.

(2) Any borrowing under subsection (1) may not exceed five percent of the most recent audited revenues of the entity.

(3) A county government entity that has any such borrowing shall ensure that the money borrowed is repaid within a year from the date on which it was borrowed.

143. Persons who are authorised to execute loan documents at county government level

(1) The County Executive Committee member for finance or any person designated by the County Executive Committee member for finance in writing is authorised to execute loan documents for borrowing by the county government.

(2) Despite the provisions of subsection (1), the following persons are authorised to execute loan documents for borrowing by a county government entity—

(a) the accounting officer responsible for the entity; and

(b) any other specified office holder authorised by legislation to execute such documents on behalf of an entity.

144. County government may issue securities only if authorised by this Act

(1) The county government may issue securities, whether for money that it has borrowed or for any other purpose, only in one or more series and only in accordance with this Act and regulations.

(2) The County Executive Committee member for finance may issue securities on behalf of the county government, for money borrowed by the county government in accordance with the criteria prescribed by regulations made for the purpose of this subsection.

(3) Subject to the provisions of section 141 of this Act, the authority of the County Executive Committee member for finance to borrow money includes the authority to borrow money by issuing county government securities in accordance with the regulations.

(4) Any county government securities issued by the County Executive Member for finance under this section shall be within the borrowing limits set out by the county assembly under section 141(2) of this Act.

(5) A county government securities—

(a) may be issued in one or more series; and

(b) may be issued in accordance with loan agreements entered into in accordance with regulations developed by the County Executive Committee member for finance and approved by the County Assembly.

(6) An agreement to obtain a loan by a county government entity made under subsection (5), may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by the county assembly.

(7) The County Executive Committee member for finance shall ensure that every county government security issued under this section is given in the name of that County.

(8) A county government security may be executed on behalf of the county government only by—

(a) the County Executive Committee member for finance;

(b) a delegate appointed by the County Executive Committee member for finance; or

(c) a borrowing agent appointed for that purpose under this Act.

(9) For the purposes of subsection (8), it shall be sufficient if the signature of a person who is required to execute a county government security under this section is reproduced on the security.

(10) At the request of the holder of a county government security, the County Executive Committee member for finance—

(a) may authorise the principal, or any interest payable in respect of the principal, to be paid at a place in Kenya or elsewhere different from the place otherwise provided; and

(b) may revoke such an authorisation and substitute thereof.

(11) A person to whom an authorisation is given under subsection (10) shall comply with the authorisation.

(12) The County Executive Committee member for finance may authorise in writing the issue of a duplicate county government security to replace a county Government security that is lost, damaged, or destroyed, but only if the County Executive Committee member for finance is satisfied that loss, damage or destruction has occurred.

(13) Subject to this Act or any other legislation, secondary trading of county government securities may be carried out only in such manner as may be prescribed by regulations made for the purposes of this subsection and in accordance with the provisions of this Act.

(14) In this section, "secondary trading" means any activity leading to a change in the ownership of a county government security before its redemption date.

(15) Nothing provided under this section shall prevent county government securities to be issued and exist in electronic form as a debt entry.

(16) If the proceeds of a county government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder's personal representatives, are unknown, the County Executive Committee member for finance shall arrange for the County Treasury to credit the amount of money due to the holder to an interest free account for the holder's benefit.

(17) If, after six years from the redemption date of a county government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder's personal representatives, the County Executive Committee member for finance shall return the uncollected amount to the County Exchequer Account to form part of the County Revenue Fund in accordance with regulations.

(18) The right of any person who has a legitimate claim to the proceeds of a security is not affected by the payment of the proceeds into the County Revenue Fund.

(19) The County Executive Committee member for finance shall publish and publicise annually all payments made in terms of subsection (17).

(20) Duty is not chargeable under the Stamp Duty Act (Cap. 480) for the issue of a county government security.

145. County government authorised to lend money

(1) A county government entity may lend money in accordance with this Act or any county legislation.

(2) The County Executive Committee member for finance may, in relation to any money lent by the county government under this section—

(a) accept, in consultation with the Central Bank of Kenya, all money payable under the loan in any currency the County Executive Committee member for finance considers appropriate; and

(b) agree at any time to the variation of any security given in respect of the loan.

(3) Money loaned under this section is payable only—

(a) from an appropriation for development expenditures; or

(b) from some other authority approved by the county assembly for the purpose for which the loan is made.

(4) The County Executive Committee member for finance shall ensure that a security given in respect of a loan under this section is given in the name of the county government.

(5) The County Executive Committee member for finance may, on behalf of the county government, carry out any of the responsibilities, and exercise any of the powers, of the county government with respect to securing a loan granted by that county government.

146. County government joint infrastructure investment

(1) Regulations approved by Parliament shall prescribe financial relations with respect to joint infrastructure investments undertaken by counties and any joint infrastructure investments undertaken by counties shall be done in terms of those regulations.

(2) The Intergovernmental Budget and Economic Council may agree on regulations with guidelines for county government joint infrastructure investments.

Responsibilities of an accounting officer of a county assembly in management of public finances

147. Role of accounting officers in management of public finances

Subject to the Constitution, the accounting officer of a county assembly shall monitor, evaluate and oversee the management of their public finances, including—

(a) promoting and enforcing transparency, effective management and accountability with regard to the use of their finances;

(b) ensuring that accounting standards are applied;

(c) implementing financial policies in relation to their finances;

(d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;

(e) preparing annual estimates of expenditures;

(f) acting as custodian of the entity's assets except as may be provided by other legislation or the Constitution;

(g) monitoring the management of their finances and their financial performance;

(h) reporting regularly to the county assembly on the implementation of their budget; and

(i) take such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

Responsibilities of accounting officers of county governments and county government entities

148. Designation of accounting officers for county government entities by the County Executive Committee Member for finance

(1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.

(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.

(3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.

(4) The Clerk to the county assembly shall be the accounting officer of the county assembly.

(5) A county government may, in order to promote efficient use of the county resources, adopt, subject to approval by the county assembly, a centralised county financial management service.

149. Responsibilities of accounting officers designated for county government entities

(1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.

(2) In carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned—

(a) ensure that all expenditure made by the entity complies with subsection (1);

(b) ensure that the entity keeps financial and accounting records that comply with this Act;

(c) ensure that all financial and accounting records that the entity keeps in any form including in electronic form are adequately protected and backed up;

(d) ensure that all contracts entered into by the entity are lawful and are complied with;

(e) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance;

(f) bring a matter to the attention of the County Executive Committee member responsible for the entity if, in the accounting officer's opinion a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

(g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and financial objectives of the county government;

(h) prepare estimates of expenditure of the entity in conformity with the strategic plan referred to in paragraph (g);

(i) submit the estimates of an entity, which is not a county corporation, to the County Executive Committee member for finance;

(j) submit the estimates of an entity, which is a county corporation, to the executive committee member responsible for the entity who, after approving it, shall forward it to the County Executive Committee member for finance;

(k) not later than three months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury;

(l) try to resolve any issues resulting from an audit that remain outstanding;

(m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;

(n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;

(o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;

(p) provide the County Treasury with any information it requires to fulfil its functions under this Act;

(q) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and

(r) carry out such other responsibilities as may be specified in regulations by the County Executive Committee member for finance.

(3) Not later than three months after the county assembly has adopted a report by a committee of the county assembly with respect to a report submitted by the Controller of Budget under Article 228(6) of the Constitution, an accounting officer shall, for each entity for which the officer is designated—

(a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the county assembly; and

(b) submit the report to the county assembly with a copy to the County Treasury.

(4) Not later than one month after receiving a report by an accounting officer under subsection (3), the County Treasury shall submit to the county assembly the accounting officer's report and any comments on the report by the County Treasury.

(5) The report referred to in subsection (3) shall be published and publicised.

150. Accounting officer of a county government entity may write off any loss

(1) An accounting officer for a county government entity may write off any loss not exceeding an amount, and in circumstances prescribed by regulations for the purposes of this section.

(2) An accounting officer for a county government entity, may with the approval of the County Executive Committee member for finance, write off a loss exceeding the amount referred to in subsection (1) but not exceeding a further amount, and in circumstances prescribed by the regulations approved by Parliament.

(3) The County Executive Committee member for finance may with the approval of County Executive Committee authorise an accounting officer to write off a loss exceeding the further amount referred to in subsection (2).

(4) An accounting officer for a county government entity shall maintain a record of any losses that are written off during a financial year and shall include the record in the entity's financial statements for that year.

(5) Any loan write off is to be done in accordance with regulations approved by Parliament.

151. Spending authority of accounting officer

If a county government entity has expenditures that are charged on the County Revenue Fund under the Constitution or an Act of Parliament or county legislation, the accounting officer who has responsibility for that entity has the authority to spend the money in accordance with the purposes specified in legislation without an appropriation.

152. Power of accounting officers for county entities to make cash advances

(1) An accounting officer for a county government entity may authorise payment of cash advances to public officers employed in the entity to be used to enable those officers to make payments for the entity or in the course of their duties.

(2) The power to authorise cash advances is subject to any limitations imposed by the regulations.

(3) A public officer to whom a cash advance is made shall account for the use of the advance within a reasonable time.

(4) A public officer shall return the balance of the cash advance together with signed supporting documents for the cash expended in accordance with any requirement set out in any of the following—

(a) the documents used to apply for or authorise the advance;

(b) any regulation prescribed for the purpose of this section; or

(c) a written notice given to the officer by the accounting officer.

(5) If a public officer to whom a cash advance has been made under subsection (1) fails to account for the use of the advance, or fails to return it as required by subsection (4)—

(a) the amount of the advance not accounted for or not returned becomes a debt owed by the officer;

(b) the debt becomes subject to the payment of interest at a rate prescribed by the regulations made for the purpose of this subsection; and

(c) the debt, including the interest on it, is recoverable by that entity by making a deduction from any salary or other amount that is payable to the officer.

153. Accounting officer to be responsible for managing assets and liabilities of county government entity

(1) The accounting officer for a county Government entity—

(a) is responsible for the management of the entity's assets and liabilities; and

(b) shall manage those assets in such a way as to ensure that the county government entity achieves value for money in acquiring, using or disposing of those assets.

(2) The accounting officer for a county government entity shall dispose of assets only in terms of an Act of Parliament pursuant to Article 227 of the Constitution and shall ensure that the proceeds from all asset disposals are credited into a bank account of the entity.

154. Limited power of accounting officer to reallocate appropriated funds

(1) An accounting officer shall not authorise the transfer of an amount that is appropriated—

(a) for transfer to another county government entity or person;

(b) for capital expenditure except to defray other capital expenditure; or

(c) for wages to non-wage expenditures.

(2) An accounting officer for a county government entity may reallocate funds between programs, or between Sub-Votes, in the budget for a financial year, but only if—

(a) provisions made in the budget of a program or Sub-Vote are available and are unlikely to be used;

(b) a request for the reallocation has been made to the County Treasury explaining the reasons for the reallocation and the County Treasury has approved the request; and

(c) the total of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that year.

(3) Regulations approved by the county assembly may prescribe requirements for the reallocation of funds within Sub-votes or programs.

155. County government entity to maintain internal auditing arrangements

(1) A county government entity shall ensure that it complies with this Act and—

(a) has appropriate arrangements for conducting internal audit according to the guidelines issued by the Accounting Standards Board; and

(b) if any regulations are in force under subsection (2), those regulations are complied with.

(2) Regulations may prescribe requirements to be complied with in conducting any audits.

(3) The arrangements for the conduct of internal auditing for a county government entity include—

(a) reviewing the governance mechanisms of the entity and mechanisms for transparency and accountability with regard to the finances and assets of the entity;

(b) conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity;

(c) verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;

(d) providing assurance that appropriate institutional policies and procedures and good business practices are followed by the entity; and

(e) evaluating the adequacy and reliability of information available to management for making decisions with regard to the entity and its operations.

(4) A county government entity shall ensure that the arrangements for conducting internal audits in respect of the entity are in accordance with international best practices for internal auditing.

(5) A county government entity shall establish an internal auditing committee whose composition and functions are to be prescribed by the regulations.

156. Disciplinary measures against public and accounting officers

(1) If an accounting officer reasonably believes that a public officer employed by a county government entity has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall—

(a) take appropriate measures to discipline the public officer in accordance with regulations; or

(b) refer the matter to be dealt in terms of the statutory and other conditions of employment applicable to that public officer.

(2) If the County Executive Committee Member for finance reasonably believes that an accounting officer has engaged in improper conduct within the meaning of subsection (4), the County Executive Committed member for finance shall—

(a) take appropriate measures to address the matter in accordance with laid down procedures; or

(b) refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(3) The measures referred to in subsection (2)(a) include the County Executive Committee member for finance revoking the designation as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct if the officer—

(a) contravenes or fails to comply with this Act or any regulation in force;

(b) undermines any financial management procedures or controls;

(c) makes or permits an expenditure that is unlawful or has not been properly authorised by the entity concerned; or

(d) fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1)(a) or (2)(a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct concerned.

Receivers and collectors of county government revenue

157. Designation of receivers of county government revenue

(1) The County Executive Committee member for finance shall, in writing, designate persons to be responsible for collecting, receiving and accounting for such county government revenue as the County Executive Committee member for finance may specify in their letters of designation.

(2) A receiver of county government revenue is responsible to the County Executive Committee member for finance for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for.

158. Receiver may authorise public officer to be collector of revenue

(1) A receiver of revenue for a county government may authorise any public officer employed by that county government or any of its entities to be a collector of revenue for the purpose of collecting revenue for that county government and remitting it to the receiver.

(2) Any other public officer, other than a receiver of revenue or collector of revenue for a county government, who collects revenue for that Government shall, not later than three days after receiving it, deliver the revenue to a receiver or collector of revenue for that county government.

(3) A receiver of revenue for a county government shall provide quarterly statements to the County Treasury with copies to the National Treasury and the Commission on Revenue Allocation.

159. Powers of County Executive Committee member for finance to waive or vary tax, fees or charges

The County Executive Committee member for finance may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that —

(a) the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of this Act;

(b) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and

(c) such waiver or variation has been authorised by an Act of Parliament or county legislation.

160. Kenya Revenue Authority may be appointed collector

The County Executive Committee member for finance may authorise the Kenya Revenue Authority or appoint a collection agent to be a collector of county government revenue for the purposes of this Part on such terms and conditions as may be agreed in writing in accordance with regulations.

161. County government revenue raising measures to conform to Article 209(5) of the Constitution

In imposing a tax or other revenue raising measure, a county government shall ensure that the tax or measure conforms to Article 209(5) of the Constitution and any other legislation, and before imposing any tax or revenue raising measures under this Article, shall seek views of the Cabinet Secretary and the Commission on Revenue Allocation.

Obligations of County Public Officers

162. Obligations of public officers with respect to county government resources

(1) Every public officer employed in or by the county government shall comply with the Constitution and all laws relating to conduct of public officers when carrying out a responsibility imposed, or exercising a power conferred, by this Act.

(2) Every public officer shall also—

(a) comply with the provisions of this Act so far as they are applicable to the officer;

(b) ensure that the resources within the officer's area of responsibility are used in a way that—

(i) is lawful and authorised; and

(ii) effective, efficient, economical and transparent; and

(c) within the officer's area of responsibility—

(i) ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property; and

(ii) use the officer's best efforts to prevent any damage from being done to the financial interests of the county government.

Financial reporting by county government entities

163. County government to prepare annual financial statement

(1) At the end of each financial year, the County Treasury shall, for the county government, consolidate the annual financial statements in respect of all the county government entities in formats to be prescribed by the Accounting Standards Board.

(2) The County Treasury shall include in the consolidated financial statements—

(a) a statement of all money paid into and paid out of the County Exchequer Account;

(b) a summary of—

(i) the appropriation accounts and statements prepared by accounting officers under section 164; and

(ii) the statements prepared by receivers of revenue under section 165;

(c) a statement of payments, if any, made out of the County Exchequer Account that are authorised by legislation other than an Appropriation Act;

(d) a statement of the total amount of debt of the county government that is outstanding at the end of the financial year;

(e) a statement of the debt guaranteed by the national government at the end of the financial year;

(f) such other statements as the county assembly may require; and

(g) a statement on the summary of the accounts from the county assembly.

(3) The County Treasury shall ensure that the statements and summaries referred to in subsection (2) are in a form that is in accordance with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Not later than four months after the end of each financial year, the County Treasury shall—

(a) submit the financial statements and summaries referred to in subsection (1) to the Auditor-General; and

(b) deliver a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation.

164. Annual reporting by accounting officers

(1) At the end of each financial year, the accounting officer for a county government entity shall prepare financial statements in respect of the entity in formats to be prescribed by the Accounting Standards Board.

(2) The accounting officer shall include in the financial statements—

(a) appropriation accounts, showing—

(i) the services for which the appropriated money was spent;

(ii) the amounts actually spent on each service; and

(iii) the status of each Vote compared with the appropriation for the Vote; and

(iv) a statement explaining any variations between the actual expenditure and the sums Voted; and

(v) any other information specified by the County Treasury;

(b) a statement of the entity's debt that is outstanding at the end of the financial year;

(c) a statement of the entity's debt guaranteed by the national government as at the end of the financial year;

(d) a statement of the entity's assets and liabilities as at the end of the financial year in respect of—

(i) each Vote, clearly identifying between recurrent and development expenditure; and

(ii) funds and deposits;

(e) a statement of the accounting policies followed in preparing the financial statement; and

(f) a statement of the county government entity's performance against predetermined objectives.

(3) The accounting officer shall prepare the financial statements in a form that complies with relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Within three months after the end of each financial year, the accounting officer for an entity shall—

(a) submit the entity's financial statements to the Auditor-General; and

(b) deliver a copy of the statements to the relevant County Treasury, the Controller of Budget, and the Commission on Revenue Allocation.

(5) In the case of an entity that is a County corporation, the accounting officer shall submit a copy of the county corporation's financial statements to the County Executive Committee member

responsible for that corporation who shall approve and forward the statements to the County Executive Committee member for finance.

165. Annual reporting by receivers of revenue

(1) At the end of each financial year, a receiver of revenue for a county government shall prepare an account in respect of the revenue collected, received and recovered by the receiver during that financial year.

(2) The account under subsection (1) shall include—

(a) a statement of receipts and disbursement in a form prescribed by the Accounting Standards Board from time to time; and

(b) a statement of arrears of revenue.

(3) Not later than three months after the end of the financial year, the receiver of revenue for the county government shall—

(a) submit the accounts to the Auditor-General; and

(b) deliver a copy to the National Treasury, the Controller of Budget, County Treasury, and the Commission on Revenue Allocation.

(4) Not later than two months after the end of each financial year, a receiver of revenue for the county government shall submit to a county assembly a report with respect to all waivers and variations of taxes, fees or charges granted by the receiver during that year.

(5) The receiver shall include in the report the following details in respect of each waiver or variation—

(a) the full name of each person benefiting from the waiver or variation;

(b) the amount of tax, fee or charge affected by the waiver or variation;

(c) the year to which the waiver or variation relates;

(d) the reasons for waiver or variation; and

(e) the legislation in terms of which the waiver was authorised.

166. Accounting officer to prepare quarterly reports for county government entity

(1) An accounting officer for a county government entity shall prepare a report for each quarter of the financial year in respect of the entity.

(2) In preparing a quarterly report for a county government entity, the accounting officer shall ensure that the report—

(a) contains information on the financial and non-financial performance of the entity; and

(b) is in a form determined by the Accounting Standards Board.

(3) Not later than fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the County Treasury.

(4) Not later than one month after the end of each quarter, the County Treasury shall—

(a) consolidate the quarterly reports and submit them to the county assembly;

(b) deliver copies to the Controller of Budget, National Treasury and the Commission on Revenue Allocation; and

(c) publish and publicise them.

(5) In the case of an entity that is a county corporation, the accounting officer for the corporation shall also submit a copy of the quarterly report to the County Executive Committee member responsible for the corporation, who, upon approving it, shall submit a copy to the County Treasury.

167. Annual reporting by Administrators of county public funds

(1) The administrator of a county public fund established by the Constitution, an Act of Parliament or county legislation shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

(2) In preparing a financial statement for a county public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the fund.

(3) Not later than three months after the end of each financial year, the administrator of a county public fund shall submit the financial statements prepared under this section to the Auditor General.

(4) The administrator shall submit a copy of the report to the County Executive Committee member responsible for the fund.

168. Quarterly reporting by administrators of county public funds

(1) The administrator of a county public fund established by the Constitution, an Act of Parliament or county legislation, shall prepare quarterly financial statements for the fund in a form prescribed by the Accounting Standards Board.

(2) In preparing a quarterly financial statement for a county public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the fund.

(3) Not later than fifteen days after the end of each quarter, the administrator shall submit the quarterly report to the County Treasury and a copy to the Controller of Budget.

Financial management in urban areas and cities

169. Application of this part to urban areas and cities

(1) This part applies to urban areas and cities as defined in the Urban Areas and Cities Act, 2011.

(2) For purposes of this Act, all provisions of this Act that apply to county government entities shall apply to urban areas and cities, unless expressly stated otherwise.

170. Accounting Officer of urban area or city

The accounting officer for an urban area or city shall be designated as provided in section 148 of this Act, and as accounting officer shall—

(a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and

(b) be responsible and accountable to the county assembly for the financial management and administration of the urban area or city.

171. Urban area or city accounting officer responsibilities in revenue management

(1) The accounting officer of an urban area or city is responsible for the management of the revenue received by that urban area or city in accordance with section 172.

(2) The accounting officer shall—

(a) for the purposes of collection systems consistent with this Act and the Urban Areas and Cities Act, manage, the urban area or city's credit control and debt collection policy;

(b) immediately inform the County Executive Committee member for finance of any payments due to the urban area or city by a State organ in respect of city or urban area tax, or services, if such payments are regularly in arrears for periods of more than thirty days; and

(c) take all reasonable steps to ensure that any funds collected by the urban area or city on behalf of another organ of state is transferred to that organ of state within three days and that such funds are not used for purposes of the city or urban area.

172. Financing of urban areas or cities

Subject to the Constitution and any other Act of Parliament, and with the approval of the County Assembly, an urban area or city may be funded through any of the following sources—

(a) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by the urban area or city for the purpose of defraying its costs for providing services;

(b) revenue allocated by the county government to the urban area or city;

(c) investment income;

(d) grants and donations; or

(e) borrowing as provided for under section 140 of this Act.

173. Criteria for allocating funds to urban areas or cities by county governments

(1) In allocating funds to the urban areas or cities under section 172(b), the county government shall use objective criteria reflecting the service demand and responsibilities of the urban area or city.

(2) The objective criteria to be prescribed in county legislation, may include, among others, adjustments for—

(a) the proportional population, calculated as the population of the urban area or city divided by the total population of the county;

(b) the relative area, calculated as the area of the urban area or city divided by the total county area;

(c) the relative poverty levels based on objective measures of relative poverty;

(d) the relative per capita revenue collection estimated as urban area or city per capita revenue collection divided by the County per capita revenue collection;

(e) an objective measure to account for price differentials in providing similar services in the urban area and city relative to the rural areas of the county;

(f) a minimum amount to ensure effective delivery of essential services and responsibilities assigned to the urban area or city; and

(g) incentives to encourage urban areas and cities to exercise prudent financial management as well as transparency and accountability in public financial management.

(3) In approving the criteria in subsection (2), the County Assembly will seek the recommendations of the Commission on Revenue Allocation.

174. Principles to be observed by urban areas or cities in managing public finances

The accounting officer of an urban area or city shall observe the following principles in managing public finances of that entity—

(a) the actual expenditure on the personnel shall not exceed a percentage of their allocation to be prescribed by the County Assembly;

(b) on an annual basis the urban area's or city's recurrent expenditure shall not exceed its revenue;

(c) in the medium term, the recurrent expenditure may not exceed a percentage of total revenue, which will be approved by the county assembly;

(d) an urban area's or city's debts are maintained at a sustainable level; and

(e) over the medium term, the proceeds of borrowing by an urban area or city are used only for purposes of financing development expenditure and not recurrent expenditure.

175. Budget and budget process for urban areas or cities

(1) An urban area or city shall develop a strategic plan based on the integrated development plan that is consistent with the County Fiscal Strategy Paper.

(2) The strategic plan along with any further guidelines from the County Treasury on the county budget process shall form a basis for development of the urban area's or city's budget proposals.

(3) No later than the 30th August of every year, the County Treasury shall issue budget instructions to the urban areas or cities.

(4) The instructions shall prescribe the manner, form and timing in which the budget requests shall be submitted and subsequently reported on.

(5) The urban area or city shall on the basis of the instructions in subsections (3) and (4) prepare and submit budget requests to the County Treasury upon approval by the Board in sufficient time, in the case of cities and municipalities, for their approval as part of the annual county Appropriation Bill.

(6) The budget estimates in subsection (5) shall include the current services budget, representing the cost of maintaining the urban area or city services at current levels.

(7) The budget submission shall also contain new services requests, covering one-time expenditures for the construction and maintenance of facilities in the urban area' or city.

(8) The County Treasury shall evaluate the budget proposal and make recommendations to the urban area or city to enable the preparation of the itemized annual budget for consideration and approval by its Board.

(9) In preparing the strategic plan in subsection (1) and the annual budget estimates in subsection (5), the accounting officer of an urban area or city—

(a) shall ensure that the public is given an opportunity to participate in the preparation process as outlined in the second schedule of the Urban Areas and Cities Act, 2011; and

(b) for that purpose, may publish guidelines for public participation.

(10) The Accounting Officer of each urban area or city shall—

(a) publish and publicise the strategic plan within seven days following its adoption; and

(b) publish and publicise the annual budget estimates within twenty one days after the county assembly has approved the budget estimates.

176. Response to delays in approval of annual budgets by urban areas or cities

(1) If the annual County Appropriation Act for the financial year has not been assented to or is not likely to be assented to by the beginning of the financial year, the relevant county assembly may authorise the withdrawal of funds from the County Revenue Fund for the purpose of meeting expenditure of an urban area or city in accordance with subsection (2).

(2) Funds withdrawn under subsection (1)—

(a) may only be used to meet expenditure necessary to carry on the services of the urban area or city during the financial year concerned using the estimates submitted to the county assembly for approval; and

(b) may not exceed in total one-half of the amount included in the estimates of expenditure submitted to the county assembly for approval.

177. Borrowing by urban areas or cities

(1) An urban area or city may borrow only—

(a) from the county government;

(b) through its county government; or

(c) by way of a bank overdraft.

(2) Any borrowing by an urban area or city shall be subject to such terms and conditions as the county assembly may impose, and in the case of paragraph (b), in accordance with the provisions of section 140 of this Act.

178. Conditions in which urban areas or cities may receive grants

(1) An urban area or city may receive a grant or donation from a development partner only with the approval of the County Executive Committee member for finance concerned, and only as provided under section 138 of this Act.

(2) The grants referred to in subsection (1) shall be expended in accordance with the strategic plan as provided for under section 175.

(3) As soon as possible after receiving the grant or donation, the recipient shall notify the County Executive Committee member for finance and the Cabinet Secretary of the receipt.

(4) If a project that is being financed by a grant or donation from a development partner requires county government funding, the project may only be started when—

(a) the required funding has been appropriated in accordance with this Act or is otherwise authorised by legislation; or

(b) the County Executive Committee member for finance has given a written authorisation for the project to begin.

(5) The recipient of a grant or donation from a development partner shall record the amount or value of the grant or donation in its accounts.

(6) Subject to Article 229(4) of the Constitution, the recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using government financial and accounting laws, rules and regulations and, administrative procedures, accounting and auditing procedures, or any of its financial accounting rules and procedures for accounting for the receipt or expenditure of money that are specified in, or referred to, in any agreement between the recipient and the development partner.

(7) The County Executive Committee member for finance may in addition to the audit above, permit a donor of a grant to audit such funds on the basis of its own financial accounting rules.

179. Urban areas or cities bank accounts

(1) An urban area or city shall open and maintain a bank account in the name of the Urban Area or City, and with the approval of the respective County Executive Committee member for finance.

(2) All money received by an urban area or city shall be paid into its bank account or accounts, and this shall be done promptly and in accordance with this Act and any requirements that may be prescribed.

180. Reporting by urban areas or cities

(1) The Board of an urban area or city shall ensure that the urban area or city follows the guidelines prescribed by the Accounting Standards Board.

(2) The Accounting Officer of an urban area or city shall prepare an annual report including accounts in accordance with the provisions of the Urban Areas and Cities Act, 2011 and other reports as required by this Act.

(3) The annual report of an urban area or city shall contain such additional information as is necessary to enable an informed assessment of the activities of the urban area or city.

181. Transitional arrangements

All directions, resolutions, orders and authorizations on financial management given or issued by local authorities established under the Local Government Act (Repealed) and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made pursuant to the Urban Areas and Cities Act (Cap. 275) and this Act as the case may be, until the expiry, amendment or repeal of these Acts.

Establishment and dissolution of County Corporations and additional requirements for County Corporations and county government-linked corporations

182. Establishment and dissolution of county corporations

(1) A county corporation may be established or dissolved only with the prior approval of the County Executive Committee, which may be given only after taking into account any recommendations of the County Treasury regarding the financial implications of establishing or dissolving the county corporation.

(2) The regulations shall prescribe the criteria to be used in establishing or dissolving county corporations and the regulations shall be tabled in the county assembly for approval.

183. Restrictions on county government investing in county government-linked corporations

(1) The county government or county government entity may not invest—

(a) in a county corporation; or

(b) in a county government-linked company,

without the prior approval of the County Executive Committee, which may be given only after taking into account any recommendations of the County Treasury regarding the financial implications of the investment.

184. Responsibility for monitoring financial performance of county corporations

(1) The County Executive Committee member for that entity is responsible for monitoring—

(a) the financial performance of County corporations and county government-linked corporation; and

(b) the performance of any functions or activities that affect the financial performance of those county corporations.

(2) The responsibilities of the County Executive Committee member for that entity under subsection (1) shall include in particular—

(a) analysing financial and other reports that are required to be prepared by a county corporation under any Act or county legislation;

(b) reporting to the County Executive Committee on the performance of those county corporations; and

(c) making recommendations to the County Executive Committee as to how a particular county corporation or county government-linked corporation could improve its performance.

185. Annual reporting by the County Treasury on county corporations

(1) Not later than four months after the end of each financial year, the County Treasury shall prepare and submit to the county assembly a consolidated report summarising the extent of county government involvement or investment in, or funding of, all county corporations and county government-linked corporations for the financial year.

(2) The report in subsection (1) shall include information on—

(a) the date of incorporation and objects of the county corporation;

(b) the amount of county government shareholding, directly or indirectly, in the county corporation;

(c) any changes in the shareholding of the county corporation during the financial year;

(d) the amount of any funding in the form of grants or subsidies provided by the county government to the county corporation or public entity, excluding profit making entities, during the financial year;

(e) the amount of any loans made by the government to the county corporation, during the financial year;

(f) the cumulative amount of undischarged loans in respect of the corporation;

(g) the amount of profit or loss of the County corporation for the financial year;

(h) the amount of any revenue received by the county government from the county corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the county corporation;

(i) the payments made, or losses incurred, by the county government to meet contingent liabilities as a result of loans during the financial year, including payments made in respect of loan write-offs or waiver of interest on loans; and

(j) an assessment of the financial and related non-financial performance of the county corporation for the financial year.

(3) Once every three years, the County Executive Committee member responsible for matters relating to public investments shall prepare a report on the need for the county government continued involvement in, or funding of, the County Corporation or county government-linked company.

(4) Copies of the reports prepared in subsections (1) and (3) shall be submitted to the Controller of Budget, the Commission on Revenue Allocation and the Auditor-General.

186. Definitions for purposes of sections 182, 183 and 184

For the purposes of sections 182, 183 and 184—

(a) **"county government-linked corporation"** means a county corporation in which the county government is a shareholder with less than fifty percent of the share capital of the corporation; and

(b) **"invest"** means any form of funding, or potential funding, provided to a County corporation, including providing share capital, loans, grants or subsidies.

Part V – RELATIONS BETWEEN NATIONAL AND COUNTY GOVERNMENTS ON BUDGET AND ECONOMIC MATTERS

Establishment of the Intergovernmental Budget and Economic Council

187. Establishment, purpose and composition of the Intergovernmental Budget and Economic Council

(1) There is established a council to be known as the Intergovernmental Budget and Economic Council comprising—

(a) the Deputy President who shall be the Chairperson;

(b) the Cabinet Secretary;

(c) a representative of the Parliamentary Service Commission;

(d) a representative of the Judicial Service Commission;

(e) the Chairperson of the Commission on Revenue Allocation or a person designated by the Chairperson;

(f) the Chairperson of the Council of County Governors;

(g) every County Executive Committee member for finance; and

(h) the Cabinet Secretary responsible for intergovernmental relations.

(2) The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on—

(a) the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;

(b) matters relating to budgeting, the economy and financial management and integrated development at the national and county level;

(c) matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;

(d) agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;

(e) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;

(f) any proposed regulations to this Act; and

(g) recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and

(h) any other matter which the Deputy President in consultation with other Council members may decide.

(3) An appointed member of the Council holds office for two years and is eligible for re-nomination and re-appointment at the end of a term of office for another term not exceeding two years.

(4) The National Treasury shall provide secretariat services to the Council and assign or appoint such support staff as may be necessary for the Council to effectively perform its functions.

(5) The Council shall meet at least twice a year and the Deputy President shall decide the time and agenda for meetings of the Council in consultation with the other members of the Council.

(6) In the absence of the Chairperson from any meeting of the Council, the Cabinet Secretary shall chair the meeting.

(7) The Council may determine its own rules and procedures in such manner as it considers appropriate.

(8) The Council may invite other persons to attend any of its meetings.

188. Vacation of office by a member

A member of the Intergovernmental Budget and Economic Council shall cease to be a member if that person ceases to hold office by virtue of which he or she became a member to the Council.

The process of sharing revenue

189. The process of sharing revenue

The process of sharing revenue raised by the national government between the national and county governments, and among the county governments, shall be in accordance with the Constitution and this Act.

190. Recommendations of the Commission on Revenue Allocation

(1) At least six months before the beginning of the financial year, or at a later date agreed between the Cabinet Secretary and the Commission on Revenue Allocation, the Commission shall submit to the Senate, the National Assembly, the County Assembly, the National Executive and the County Executives, recommendations for the following financial year regarding—

(a) an equitable division of revenue raised nationally, among the national and county levels of government; and

(b) the determination of each county's equitable share in the county share of that revenue.

(2) When making its recommendations, the Commission shall take into account the criteria listed in Article 203(1) of the Constitution.

191. Bills allocating revenue and additional allocations

(1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to Parliament a Division of Revenue Bill, a County Allocation of Revenue Bill and a County Governments Additional Allocations Bill prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates.

(2) The Division of Revenue Bill shall specify the share of each level of government of the revenue raised nationally for the relevant financial year.

(3) The County Allocation of Revenue Bill shall specify—

(a) each county's share of that revenue under subsection (2);

(b) *deleted by Act No. 17 of 2022, s. 9(a)(iii).*

(3A) A Bill making allocations under Article 202(2) of the Constitution shall specify any other allocations to the counties from the National Government's share of that revenue and any conditions to which those allocations shall be made.

(4) Before the submission of the legislative proposals on the Division of Revenue and County Allocation of Revenue, the Cabinet Secretary shall notify—

(a) the intergovernmental Budget and Economic Council; and

(b) the Commission on Revenue Allocation.

(5) When the legislative proposal on the Division of Revenue and County Allocation of Revenue is submitted, it shall be accompanied by a memorandum which explains—

(a) how the Bill takes into account the criteria listed in Article 203(1) of the Constitution;

(b) the extent of the deviation from the Commission on Revenue Allocation's recommendations;

(c) the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council; and

(d) any assumptions and formulae used in arriving at the respective shares mentioned in subsections (2) and (3).

[Act No. 6 of 2014, s. 9, Act No. 17 of 2022, s. 9(a).]

191A. Intergovernmental agreements

(1) The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act.

(2) An agreement under subsection (1) shall set out any conditions that may be attached to the conditional allocations made under this Act.

(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval.

(4) The County Assembly shall, within fourteen days of submission of an agreement under subsection (3), approve or reject the agreement.

(5) Where a County Assembly fails to consider an agreement under subsection (3) within fourteen days, the agreement shall be deemed to be approved.

(6) An agreement under subsection (1) shall set out all conditions attached to an allocation made under this Act.

(7) The respective county government shall forward the agreement approved under this section to the Controller of Budget within seven days of approval.

[Act No. 17 of 2022, s. 9(b).]

191B. Public participation

The county executive committee member shall facilitate public participation on any agreement made pursuant to section 191A.

[Act No. 17 of 2022, s. 9(b).]

191C. Execution of agreement for conditional allocation

An agreement under section 191A shall be—

(a) signed by an authorized person or officer; and

(b) published in the Kenya *Gazette* within a period of seven days of the agreement.

[Act No. 17 of 2022, s. 9(b).]

191D. Submission to Senate

(1) The National Treasury shall, within seven days of entering into an agreement under section 191A, submit to the Senate and the Controller of Budget, the agreement together with any other documents relating to the agreement.

(2) The National Treasury shall publish and publicize all agreements entered into pursuant to section 191A.

[Act No. 17 of 2022, s. 9(b).]

191E. Requisition of funds

Requisition of funds from the county revenue fund for the purposes of a conditional grant shall be supported by the intergovernmental agreement approved under section 191A.

[Act No. 17 of 2022, s. 9(b).]

Part VI – PUBLIC SECTOR ACCOUNTING STANDARDS BOARD

192. Establishment of the Board

There is established a Public Sector Accounting Standards Board which shall perform the functions set out in this Part.

193. Composition of the Board

(1) The Accounting Standards Board shall consist of a representative of each of the following bodies who shall serve on a part-time basis—

(a) the National Treasury;

(b) the Controller of Budget;

(c) the Intergovernmental Budget and Economic Council;

(d) the Auditor-General;

(e) the Institute of Certified Public Accountants of Kenya;

(f) the Association of Professional Societies of East Africa;

(g) the Capital Markets Authority;

(h) the Institute of Internal Auditors; and

(i) the Institute of Certified Public Secretaries of Kenya.

(2) The Cabinet Secretary shall appoint a chairperson of the Board from members nominated under subsection (1).

(3) In making nominations to the Board, the respective organisations shall ensure that their nominees are certified members in good standing of a professional body in accounting or finance recognised by law in Kenya.

(4) Members of the Board except *ex-officio* members shall be appointed by the Cabinet Secretary and serve for a term of three years, renewable once for a further and final term of three years.

(5) The National Treasury shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.

(6) The Board may establish and regulate its own operating procedures.

[Act No. 38 of 2016, s. 59.]

194. Functions of the Board

(1) The Accounting Standards Board shall provide frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities, and shall in particular perform the following functions—

(a) set generally accepted accounting and financial standards;

(b) prescribe the minimum standards of maintenance of proper books of account for all levels of Government;

(c) prescribe internal audit procedures which comply with this Act;

(d) prescribe formats for financial statements and reporting by all state organs and public entities;

(e) publish and publicise the accounting and financial standards and any directives and guidelines prescribed by the Board;

(f) in consultation with the Cabinet Secretary on the effective dates of implementation of these standards, *Gazette* the dates for application of the standards and guidelines; and

(g) perform any other functions related to advancing financial and accounting systems management and reporting in the public sector.

(2) In setting the standards under subsection (1), the Board shall take into account any relevant factors including—

(a) best international accounting practices; and

(b) the capacity of the relevant entity to comply with the standards.

(3) The Board may set different standards for different categories of entities to which these standards apply including to develop content, structure and format of county frameworks and accounting and financial guidelines which are in line with the setting of county standards.

(4) The Board shall monitor the adherence to the standards by all State organs and public entities.

(5) The standards set by the Board shall promote transparency and other Constitutional values and principles in effective, prudence and efficient management of revenue, expenditure, assets and liabilities of the institutions to which these standards apply.

195. Vacation of office and remuneration of Board members

(1) A member of the Accounting Standards Board, other than an *ex-officio* member, may—

(a) at any time resign from the Board by notice in writing to the chairperson;

(b) be removed from the Board if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding one hundred thousand shillings;

(v) is incapacitated by prolonged physical or mental illness or is deemed unfit to discharge his or her duties as a member of the Board; or

(vi) ceases to be a member by virtue of the withdrawal of his or her nomination to the Board by the nominating institution.

(2) The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

Part VII – ENFORCEMENT PROVISIONS

196. Offences by public officers

(1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.

(2) A public officer shall not raise revenues other than in accordance with the Constitution, an Act of Parliament or an Act of a County Assembly.

(3) A public officer shall not enter into any obligation that has financial implications for the national government budget or a county government budget unless the obligation is authorised by the Constitution, an Act of Parliament or an Act of a County Assembly.

(4) A public officer shall not borrow money, issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind the national government entity or a county government entity to any future financial obligation, unless the borrowing, guarantee, indemnity, security or other transaction is authorised by this Act or by any other written law and, in the case of loans or guarantees, is within the limits provided under this Act.

(5) A public officer shall not direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.

(6) A public officer who contravenes this section commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

(7) Where a national government entity or a county government entity—

(a) engages in an action that it is prohibited from doing by this Act; or

(b) fails to comply with an obligation imposed on it by this Act,

a public officer who assisted or facilitated the act, or who was a party to, or contributed to, the failure, commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both in addition to provisions under Article 226(5) of the Constitution.

197. Offences of financial misconduct

A public officer employed by the national government or a national government entity commits an offence of financial misconduct if, without lawful authority, the officer—

(a) issues public government securities, or varies their terms and conditions;

(b) opens a bank account in the name of the government;

(c) lends money on behalf of the Government;

(d) issues guarantees or indemnities on behalf of the Government;

(e) issues securities for loans made to the government;

(f) disposes of property belonging to or under the control of, that government or entity;

(g) fails to pay into a government bank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity;

(h) incurs expenditure or makes a commitment on behalf of that government or entity;

(i) incurs wasteful expenditure on behalf of that government or entity;

(j) fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act (Cap. 185B);

(k) fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorised by this Act or any other written law;

(l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;

(m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;

(n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;

(o) for the purpose of procuring for the public officer or any other person or organisation—

(i) makes improper payment of public money belonging to or entrusted to that government or entity; or

(ii) makes improper use of any public property of that government or entity; or

(p) fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.

198. Other offences by public officers

(1) A public officer commits an offence if that officer—

(a) takes possession of public funds or assets without lawful authority;

(b) misappropriates public funds or assets;

(c) conceals information on public finances to obtain a financial benefit either for the officer or another person; or

(d) engages in a corrupt act.

(2) In this section, "corrupt act" includes soliciting or receiving an inducement.

199. Penalties for offences

Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding ten million shillings, or to both.

200. Duty of Principal Secretary to report suspected offences to relevant law enforcement authority for investigation

(1) If the Principal Secretary suspects that an offence may have been committed under this Act, that Secretary shall take all practicable steps to report the matter to the relevant law enforcement authority to enable that authority to investigate the suspected offence and, if evidence of the offence is discovered, institute proceedings to prosecute any person who is alleged to have committed it.

(2) If the Principal Secretary fails to report a suspected offence as required by subsection (1), that Principal Secretary is liable to disciplinary action in accordance with—

(a) the terms and conditions of that Principal Secretary's appointment or employment; and

(b) any provisions prescribed by regulations for the purposes of this section.

201. Duty of County Chief Officer to report suspected offences

(1) If the County Chief Officer suspects that an offence may have been committed under this Act, he or she shall notify the County Executive Committee member for finance and take all practicable steps to report the matter to the relevant law enforcement authority to enable that authority to investigate the suspected offence and, if evidence of the offence is discovered, to institute proceedings to prosecute any person who is alleged to have committed it.

(2) If the County Chief Officer fails to report a suspected offence as required by subsection (1), that County Chief Officer is liable to disciplinary action in accordance with—

(a) the terms and conditions of that Chief Officer's appointment or employment; and

(b) any provisions prescribed by regulations for the purposes of this section.

202. Liability of public officer for certain losses sustained by national government

(1) A public officer is personally liable for any loss sustained by the national government that is attributable to—

(a) the fraudulent or corrupt conduct, or negligence, of the officer; or

(b) the officer's having done any act prohibited by section 196, 197 and 198.

(2) The National Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection (1).

203. Liability of public officer for certain losses sustained by county government

(1) A public officer is personally liable for any loss sustained by a county government that is attributable to—

(a) the fraudulent or corrupt conduct, or negligence, of the officer; or

(b) the officer's having done any act prohibited by sections 196, 197 and 198.

(2) The County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection (1).

204. Cabinet Secretary may impose institutional sanctions on national government entities

(1) The Cabinet Secretary may apply sanctions to a national government entity that—

(a) approves the contracting of debt beyond any debt limits provided under this Act;

(b) defaults on a loan;

(c) provides inaccurate information to public officers regarding financial matters;

(d) issues a guarantee without proper authorisation;

(e) issues a guarantee for an amount in excess of any limits set under this Act;

(f) creates liabilities in excess of its ability to finance those liabilities;

(g) fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General; or

(h) contravenes section 196.

(2) The Cabinet Secretary may apply any of the following sanctions to a national government entity that has done, or failed to do, anything referred to in subsection (1)—

(a) impose on the entity reporting requirements additional to those required by this Act or any other written law;

(b) suspend the ability of the entity to reallocate funds;

(c) withhold from the entity funds to which the entity would otherwise be entitled under the Constitution or this Act;

(d) suspend the entity's authority to borrow money;

(e) treat any accumulated liabilities as a charge on the entity's future revenues;

(f) appoint one or more administrators to administer the entity's financial affairs for such period as may be specified in the appointment.

Part VIII – MISCELLANEOUS PROVISIONS

205. Powers of the Cabinet Secretary to make regulations

(1) The Cabinet Secretary may make regulations, not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

(2) In making regulations under this Act, the Cabinet Secretary shall consult the Intergovernmental Budget and Economic Council.

(3) A provision of a regulation may—

(a) apply generally or be limited in its application;

(b) apply differently according to different factors;

(c) authorise any matter or thing to be done from time to time; or

(d) do any combination of those things.

(3A) Despite the generality in subsection (1), the Cabinet Secretary may make regulations for raising money by issuing a *Sukuk* bond which shall specify the purpose for which money may be raised.

(3B) Money raised through a *Sukuk* bond may be raised within or outside Kenya in Kenya shillings or in any other currency or medium of exchange.

(4) Regulations under subsection (1) shall not take effect unless approved by a resolution passed by Parliament.

(5) Regulations approved under subsection (4) shall take effect on the day after the date on which both Houses approved them or, if a later date is specified in the regulations, on that later date.

(6) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

[Act No. 15 of 2017, s. 48.]

206. Protection of public officers from liability

Nothing done by any authorised person or public officer working under the instructions of the National Treasury or County Treasury, if done in good faith, for the purposes of executing the powers, functions or duties of the National Treasury or County Treasury under the Constitution or this Act, renders that person or public officer personally liable for any action, claim or demand.

207. Public participation

(1) Regulations may provide for participatory governance for purposes of this Act.

(2) Regulations made under this section may provide for the following matters—

(a) structures for participation;

(b) mechanisms, processes and procedures for participation;

(c) receipt, processing and consideration of petitions, and complaints lodged by members of the community;

(d) notification and public comment procedures;

(e) public meetings and hearings;

(f) special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups;

(g) matters with regard to which community participation is encouraged;

(h) the rights and duties of members of community; and

(i) any other matter that enhances community participation.

208. Repeal of certain Acts

The following Acts are repealed—

(a) the Fiscal Management Act (No. 5 of 2009);

(b) the Government Financial Management Act (No. 5 of 2004);

(c) the Internal Loans Act (Cap. 420);

(d) the Contingencies Fund and County Emergency Funds Act (No. 17 of 2011);

(e) the National Government Loans Guarantee Act (No. 18 of 2011); and

(f) the External Loans and Credits Act (Cap. 422).

209. [Spent]

210. Savings and transitional provisions

The savings and transitional provisions specified in the Second Schedule have effect.

FIRST SCHEDULE [s. 209]

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Spent

SECOND SCHEDULE [s. 210, Act No. 15 of 2014, s. 13.]

SAVINGS AND TRANSITIONAL PROVISIONS

1. Deployment of staff to county government

   On the commencement of this Act, and in line with Article 262(15) of the Constitution, the National Treasury shall prior to the establishment of the county government, deploy such staff to that county as may be necessary to support the county in—

   (a) carrying out its responsibilities under this Act; and

   (b) performing its functions under the Constitution relating to matters of public finance.

2. Performance of functions of Accounting Standards Board

   On the commencement of this Act, and pending the establishment of the Accounting Standards Board, the functions of the Board as provided for under this Act shall continue to be performed by the relevant National Treasury department.

3. Abolition of Treasury

   (1) On the commencement of this Act—

   (a) the office known as the Treasury, as in existence immediately before that commencement, is abolished; and

   (b) subject to this Act, the National Treasury becomes responsible for any matter for which the Treasury was responsible but which was not completed before that commencement.

   (2) On the commencement of this Act, all public officers employed in the Treasury as in existence immediately before that commencement, become public officers employed in the National Treasury on the same terms and conditions as those on which they were employed immediately before that commencement.

   (3) Any reference to the Treasury in a written law is to be read as a reference to the National Treasury.

4. Principal Secretary to the National Treasury

(1) On the commencement of this Act, any reference to the Principal Secretary to the National Treasury in a written law is to be read as a reference to the Permanent Secretary to the Treasury until the first election held under the Constitution.

5. Accounting officers

   A person holding office as an accounting officer shall continue in office until the Cabinet Secretary designates otherwise.

6. Receivers of revenue

A person holding office as a receiver of revenue continues in office until the Cabinet Secretary designates otherwise.

7. Contingencies Fund

(1) On the commencement of this Act—

(a) the Civil Contingencies Fund in operation under the Civil Contingencies Fund Act (Cap. 425) is abolished; and

(b) any money held in that Fund is payable into the Contingencies Fund established by Article 208 of the Constitution.

(2) Any reference to the Civil Contingencies Fund in a written law is to be read as a reference to the Contingencies Fund established by Article 208 of the Constitution.

8. Guarantee limit

Despite the repeal of the National Government Guarantee (Loans) Act (No. 18 of 2011) by this Act, the limit of contingent liability established by resolution of the National Assembly on the 16th June 2011 under that Act continues in effect, until such time as the National Assembly sets a financial limit under section 51 of this Act.

9. Existing public funds

Any public fund that was established before the coming into operation of this Act and was in existence immediately before the coming into operation of this Act is continued as a public fund under this Act.

10. Existing regulations

Any regulations, directions or instructions that were made or issued under legislation that is repealed by this Act and that were in force immediately before the coming into operation of this Act shall, so far as not inconsistent with this Act, remain in force until regulations or instructions under this Act come into force.

11. Power to make savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature, not inconsistent with this Schedule, consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the dale of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the national government or any of its entities or a county government or any of its entities), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the national government or any of its entities or a county government or any of its entities) in respect of anything done or omitted to be done before the date of that publication.

12. Timeline for implementation of program budget

The implementation of programme budgets shall commence in 2013/14 financial year for the national government and in the 2015/16 financial year for the county governments constituted under Chapter eleven of the Constitution.

13. Issues relating to repeal of the Local Government Act

All issues that may arise on the repeal of the Local Government Act (Cap. 265) by the County Government Act, that are related to this Act, shall be dealt with and discharged by the body responsible for matters relating to transition.

14. Cash disbursement to county governments

For the period in between the first general elections under the Constitution and the end of the first financial year following the first general elections, cash disbursements to the county governments shall be on quarterly basis and in accordance with the transfer of functions to county governments.

15. Existing public offices of the Accountant-General and Internal Auditor-General

On the commencement of this Act, the public service offices of the Accountant-General and the Internal Auditor-General established under the Government Financial Management Act (No. 5 of 2004) *(now repealed)* shall continue in existence as offices of the National Treasury established under section 11(2)(c) of this Act.

16. Existing debt limit

Despite the repeal of the External Loans and Credit Act (Cap. 422) by this Act, the debt limit set by the National Assembly as in existence at the commencement of this Act, shall continue in effect until such time as the National Assembly sets another debt limit under section 50(2) of this Act.