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**PUBLIC FINANCIAL MANAGEMENT BILL, 2011**

**Harmonised Draft**

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**A Bill for**

**AN ACT of Parliament to provide for the effective management of public finances by the National Government and County Governments; and to provide for related matters**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I —PRELIMINARY**

Short title.                    **1.**      This Act may be cited as the Public Financial Management Act, 2011.  
[1]

Object of this Act            **2.**      The object of this Act is to ensure that public finances are managed at both the national level and the county level in accordance with the principles set out in Article 201 of the Constitution and that those public officers who are given responsibility for managing those finances are accountable for their management to the public through Parliament and County Assemblies.

Interpretation.              **3.**      (1) In this Act, unless the context otherwise requires—  
[3]  
“accounting officer” means—  
    (a) a person designated as an accounting officer of a National Government entity under section 66;  
    (b) a person designated as an accounting officer of a

County Government entity under section 143;

- (c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or
- (d) in the case of the Parliamentary Service Commission, the Clerk of the Senate ;

“appropriation” means—

- (a) an authority of Parliament to pay money out of the Consolidated Fund or out of any other public fund; or
- (b) an authority of 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 County Assembly that provides for 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 12(3); or
- (b) in relation to a County Treasury, means any of its officers authorised by the County Treasury in accordance with section 100(3);

“borrower” means an applicant 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 appointed under Article 152(2) of the Constitution as the Cabinet Secretary

responsible for finance;

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

“collector of revenue”—

- (a) in relation to the National Government, means a person authorised under section 75 to be a collector of revenue for that Government;
- (b) in relation to County Government, means a person authorised under section 153 to be a collector of revenue for that Government

“Constitution” means the Constitution of Kenya, 2010, adopted and enacted by the people of Kenya and published in the Gazette on 27th August, 2010;

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

“County corporation” means a public corporation established by an Act of Parliament or County legislation;

“County Emergency Funds”, in relation to a County Government, means Funds established under section 105;

“County Exchequer Account” means a County Exchequer Account referred to in section 99;

“county fiscal strategy paper” , in relation to a County Government, means the County Fiscal Strategy Paper referred to in section 113;

“County Government” means a County Government as established in accordance with Article 176 of the Constitution;

“County Government entity” means any department or agency

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of the County Government, and any authority, body or other entity declared to be a County Government entity under section 5(1);

“County Government revenue”, in relation to a County Government, means all money derived by or on behalf of that Government from levies, rates, fees, charges or any other source authorized by the Constitution or an Act of Parliament;

“County Government security” means a security issued by the County Government under section 140 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the County Government;

“County Principal Secretary” means the person appointed by the County Governor to administer the County department responsible for financial affairs of that County;

“County Secretary” means the person who is appointed under Article 179(2)(b) of the Constitution as the member of a County Executive Committee with responsibility for matters relating to the financial affairs of the County and for the County Treasury;

“County Treasury” means a County Treasury established under section 98;

“development expenditure” means an 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 the regulations for the purpose of this definition;

“document” has the same meaning as it has in Article 260 of the Constitution;

“financial statements”, in relation to a financial year or other accounting period of the National Government, County

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Government or a National Government or County Government entity, means—

- (a) the financial statements referred to in Part III Division 12 and Part IV Division 12; and
- (b) as 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 14, in relation to National Government; and
- (b) the principles of fiscal responsibility referred to in section 102, in relation to a County Government.

“financial objectives” means the financial objectives set out in a Budget Policy Statement or in a County Fiscal Strategy Paper, according to the context;

“financial year” has the meaning as in Article 220 of the Constitution;

“functions” includes duties;

“guarantee” has the same meaning as in Article 260 of the Constitution;

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

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“loan” has the same meaning as in Article 260 of the Constitution;

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

“National Exchequer Account” means the National Exchequer Account referred to in section 29;

“National Government” means the Government of the Republic of Kenya; but does not include a County Government;

“National Government entity” means 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 52 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the National Government;

“National Treasury” means the National Treasury established by section 10;

“officer”, in relation to the National Treasury, includes any of its members;

“Parliament” means Parliament as established in Article 93 of the Constitution;

“power” includes right and authority;

“Principal Secretary”, in relation to the National Treasury, means the person responsible for the administration of that

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Treasury;

“public debt” means—

- (a) all financial obligations relating to loans raised, government securities issued, or guarantees given, by the National Government; and
- (b) loans raised by a County Government;

“public money”—

- (a) means all money that comes into possession of, or is distributed by, a Government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) includes money held by Government entities in trust for third parties and any money that can generate liability for the Government;

“public officer” has the meaning given in Article 260 of the Constitution;

“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 has been published and may be accessed and read by members of the public;

“publish”, in relation to a document, includes—

- (a) publishing the document in a newspaper or other publication of general circulation in Kenya;
- (b) making the document available for reference at public libraries or offices of National Government entities;
- (c) posting the document on the Internet on a Government

website; and

- (d) 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 that Government or those entities; and
  - (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 74;
- (b) in relation to the County Government, means a person designated to be a receiver of revenue under section 152;

“recurrent expenditure”—

- (a) in relation to the National Government, means the expenditure that is incurred in operating the services provided by that Government; and
- (b) in relation to a County Government, means the expenditure that is incurred in operating the services provided by that Government,

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

“the regulations” means regulations under this Act;

“short term borrowing” means borrowing by way of bank-

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overdraft to cover temporary shortfalls and shall be fully repaid within twelve months;

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“state corporation” means a state corporation within the meaning of the State Corporations Act;

“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 draw directly from the County Revenue Fund.

“Urban Board” means a city or municipal board within the meaning of the Urban Areas and Cities Act;

“Vote” means money authorized by the Appropriations Act for withdrawal from the Consolidated Fund and County Revenue Fund;

“Wasteful expenditure” means any expenditure that was incurred that could have been avoided had due care and diligence been exercised;

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

Declaration of  
entities as National  
Government entities

**4.** (1) The Cabinet Secretary may, with the approval of Parliament, by order publish in the Gazette, declare any specified authority, body (including a state corporation) or other entity to be a National Government entity for the purpose of this Act.

(2) The Cabinet Secretary shall, from time to time, and not less than once each year, publish in the Gazette a list of authorities, bodies and other entities that have been declared to be National Government entities under subsection (1).

(3) The Cabinet Secretary may, with the approval of Parliament, from time to time, by order published in the Gazette, declare any specified authority, body (including a state corporation) or other entity to be no longer a National Government entity for the purpose of this Act.

Declaration of  
entities as County  
Government entities

**5.** (1) A County Secretary may, with the approval of the County Executive Committee, County Assembly and Parliament, by order publish in the Gazette and declare any specified authority, body (including a County corporation) or other entity to be a County Government entity for the purpose of this Act.

(2) A County Secretary shall, from time to time, and not less than once each year, publish in the Gazette a list of authorities, bodies and other entities that have been declared to be County Government entities under subsection (1).

(3) A County Secretary may, with the approval of the County Assembly and Parliament, from time to time, by order

publish in the Gazette and declare any specified authority, body (including a County corporation) or other entity to be no longer a County Government entity for the purpose of this Act.

## **PART II—PARLIAMENTARY OVERSIGHT OF NATIONAL FINANCES**

### **Division 1—Responsibilities of Committees of Parliament**

Responsibilities of National Assembly in dealing with budget matters.

**6.** (1) In addition to other responsibilities, the committee of the National Assembly established to deal with budgetary matters has responsibility for the following matters:

(a) reviewing the Budget Policy Statement and budget estimates and making recommendations to the National Assembly;

(b) providing general direction and impetus on budgetary matters;

(c) monitoring all budgetary matters falling within the competence of the National Assembly and making recommendations on those matters to the National Assembly ;

(d) studying or considering any specific matter referred to it by the National Assembly and making recommendations on the matter to the National Assembly

(e) ensuring adherence by the National Assembly, Cabinet Secretary and the National Government and its entities to the principles of public finance set out in Article 201 of the Constitution, and to the fiscal responsibility principles of this Act;

(f) ensuring the Division of Revision Bill approved by the National Assembly encompasses the principle of financing follows functions for both levels of government in accordance with Article 187 of the Constitution;

(g) examining financial statements and other documents submitted to the National Assembly under Division 12 of Part III of this Act and making recommendations to the National Assembly for improving the management of Kenya's public finances;

(h) in accordance with Article 114 of the Constitution —

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

(ii) tabling in the National Assembly a report containing the views of the Cabinet Secretary in subsection (i) above; and

(i) reviewing revenue and tax matters;

(2) The Parliamentary Budget Office shall assist the committee in the performance of its functions under this section and shall serve as the committee's secretariat.

Responsibilities of the Senate in dealing with budget matters.

**7.** (1) In addition to other responsibilities as may be provided in the standing orders, the Committee of the Senate established to deal with budgetary and financial matters has the responsibility for the following matters:

(a) subject to the exceptions in the Constitution, presenting to the Senate the proposal for the basis of allocating revenue among the Counties and considering any bill concerning county financial matters;

(b) two months before the end of the financial year, introducing into the Senate, a County Allocation of Revenue Bill in accordance with Article 218(b) of the Constitution; and

(c) examining the financial statements and other documents submitted to the Senate under Part IV Division 12 of Part IV of this Act, and making recommendations to the Senate for improving the management of county government's public finances.

(d) ensuring adherence by the Senate to the principles of public finance set out in Art. 201 of the Constitution, and to the fiscal responsibility principles of this Act.

(2) In performing its functions under subsection(1) (a) and (b) the Committee shall seek representations from the Commission on Revenue Allocation, the Cabinet Secretary, the public and any other interested persons or groups.

### **Division 2—Parliamentary Budget Office**

Parliamentary  
Budget Office  
continued by this  
section.

**8.** (1) The Parliamentary Budget Office established by section 3 of the repealed Act is continued by this section as part of the parliamentary service.

(2) The Parliamentary Budget Office comprises persons as appointed by the Parliamentary Service Commission.

(3) In appointing persons to the Parliamentary Budget Office, the Parliamentary Service Commission shall have regard to their expertise in financial, economic and public policy matters.

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(4) In this section, "repealed Act" means the Fiscal Management Act repealed by section 204.

Responsibilities of  
Parliamentary  
Budget Office.

9. (1) The Parliamentary Budget Office has the following responsibilities:

(a) to provide budget related information to the committees of Parliament;

(b) to provide service to the committees of Parliament;

(c) to prepare reports on budgetary projections and economic forecasts and propose alternatives;

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

(e) to consider budget proposals and economic trends and to make recommendations with respect to those proposals and trends;

(f) to establish and foster relationships with the National Treasury, County Treasuries and with 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;

(g) to undertake, either independently or in collaboration with any person or institution, any study or activity likely to assist the Parliamentary Budget Office in performing its functions;

(h) to ensure that all reports and other documents produced by the Parliamentary Budget Office are prepared in a readily intelligible, user-friendly form and are published on the Internet; and

(i) to report to the relevant committees of Parliament on the economic and financial impact of every Bill that is submitted to

Parliament, making reference to the fiscal responsibility principles and to the financial objectives set out in the relevant Budget Policy Statement.

(2) In carrying out its responsibilities 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**

#### **Division 1—Establishment of the National Treasury**

Establishment of the National Treasury.

[9]

**10.** (1) An entity of the National Government, called the National Treasury, is established by this section.

(2) The National Treasury comprises—

(a) the Cabinet Secretary;

(b) the Principal Secretary; and

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

(3) The Cabinet Secretary is the executive head of the National Treasury.

#### **Division 2—Responsibilities and powers of the National Treasury**

General responsibilities of the National

**11.** (1) Except as provided by the Constitution, the National Treasury has overall responsibility for public financial

Treasury

management, including—

[9, 11]

(a) developing and managing macro-economic policies including expenditure and revenue policies;

(b) managing public debt;

(c) promoting economic and financial policies that facilitate social and economic development; and

(d) promoting and enforcing transparency, effective management and accountability with regard to public finances.

(2) The National Treasury is also responsible for—

(a) designing and prescribing an efficient financial management system for Kenya to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution;

(b) coordinating with the Accounting Standards Board whose function is to prescribe and publish accounting standards for use in Kenya and to determine accounting policies that accord with generally accepted accounting principles;

(d) ensuring proper management and control of, and accounting for, the finances of the National Government and its entities in order to promote the efficient and effective use of budgetary resources at the national level;

(e) prescribe the minimum standards of maintenance of proper books of account for all levels of Government;

(f) co-ordinating the preparation of annual appropriation accounts and other statutory financial reports by the National Government and its entities;

(g) consolidating the annual appropriation accounts and

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other financial statements of the National Government and County Governments;

(h) formulating and implementing economic and financial policies in co-ordination with other National Government entities;

(i) mobilising domestic and external resources for financing Government budgetary requirements;

(j) preparing annual estimates of revenue of the National Government, and co-ordinating the preparation and implementation of the budget of the National Government;

(k) acting as custodian of National Government assets;

(l) formulating policies relating to public procurement of goods and services and disposal of assets of the National Government, County Governments and their entities;

(m) co-ordinating the management of public enterprises and investments by the National Government and its entities;

(n) prescribing requirements and procedures for the establishment, management, operation and winding up of public funds ;

(o) strengthening financial and fiscal relations between the National Government and County Governments and encouraging and supporting County Governments in performing their functions as contemplated by Article 190(1) of the Constitution;

(p) developing, monitoring and evaluating risk management strategies and governance structures for the National Government and National Government entities;

(q) prescribing internal audit procedures ;

(r) monitoring the financial and non-financial performance of state corporations;

(s) reporting regularly to the National Assembly on the implementation of the annual national budget;

(t) preparing the annual Division of Revenue and County Allocation of Revenue Bills on the amount of revenue to be shared between the National and County Government, and between the County Governments, taking into account the recommendations of the Commission on Revenue Allocation;

(u) in consultation with the State department responsible for Devolved Government, assisting County Governments to develop their capacity for efficient, effective and transparent financial management;

(v) issuing guidelines with respect to financial matters and monitoring their implementation and compliance; and

(w) taking such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

Powers of the  
National Treasury.

[12]

**12.** (1) The National Treasury has such powers as are necessary to enable the National Government and the Cabinet Secretary to carry out their responsibilities in accordance with Articles 190 and 225 of the Constitution.

(2) Without limiting subsection (1), the National Treasury may do all or any of the following:

(a) with prior notification, inspect any system of public financial management and controls of National Government entity; ;

(b) in accordance with Article 225 of the Constitution and sections 45 and 133 of this Act, take appropriate measures to deal with any failure by a State Organ or other public entity to comply

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with this Act;

(c) upon issuance of notice, access the premises of any State Organ or other public entity and inspect the entity's records and other documents relating to financial matters;

(d) require National Government entities and County Governments to comply with any specified applicable norms or standards regarding accounting practices and budget classification systems;

(e) require any public officer to provide information and if necessary, explanations with respect to matters concerning public finance.

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

(4) Any act done on behalf of the National Treasury by an authorised officer under an authorisation given under subsection (3) is taken to have been done by the National Treasury.

(5) When carrying out a responsibility, or exercising a power, on behalf of the National 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 authorisation of the member or officer for inspection. Failure to comply with such a request invalidates any subsequent action purporting to be taken under the authority of the authorisation.

(6) 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 National Treasury.

(7) The National Treasury may, in writing, revoke or vary an

authorisation given under subsection (3).

(8) An explanation or information provided by a public officer in compliance with a requirement made under subsection (2) (e) is not admissible in evidence in a prosecution against the officer for an offence (not being the offence of failing to comply with a requirement made under subsection (2) (e)) if, at the time of providing the explanation or information, the officer objected to doing so on the ground that the explanation or information might incriminate the officer.

County Treasury  
support to the  
National Treasury

**13.** (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.

The National  
Treasury to enforce  
fiscal responsibility  
principles.

**14.** (1) The National Treasury shall manage the National Government's public finances in accordance with Article 201 of the Constitution, and the principles of fiscal responsibility set out in subsection (2).

[23]

(2) In managing the National Government's public finances, the National Treasury shall enforce the following fiscal responsibility principles:

(a) over the medium term, the National Government's recurrent expenditure must not exceed a percentage (as prescribed by regulation) of the National Government revenue;

(b) the National Government's expenditure on wages and benefits for its public officers must not exceed a percentage (as prescribed by regulation) of total National Government revenue;

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

(d) that the public debt should be maintained at a sustainable level;

(e) that fiscal risks should be managed prudently; and

(f) that a reasonable degree of predictability with respect to the level of tax rates and tax bases should 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 will be restricted to management of cash flows and shall not exceed five per cent of the most recent audited national government revenue.

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

(5) The regulations may add to the list of fiscal principles set out in subsection (2).

Special  
circumstances in  
which National  
Government may  
deviate from  
financial objectives.

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

[27]

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

(3) The approval of the National Assembly for the deviations and additional expenditures referred to in subsection (1) and (2) shall be sought within two months in accordance with Article 223 of the Constitution

(4) The National Treasury shall also provide a report to the National Assembly regarding the deviation, and include in the report—

- (a) information on the reasons for the deviation;
- (b) proposals to address the deviation; and
- (c) the time estimated for doing so.

(5) The National Treasury shall publish and publicise the report within seven days after it has been submitted to the National Assembly.

### **Division 3—Responsibilities of the National Treasury with respect to public funds**

The National Treasury to administer the Consolidated Fund.

[62]

**16.** (1) The National Treasury is responsible for administering the Consolidated Fund in accordance with Article 206 of the Constitution.

(2) The National Treasury shall maintain the Consolidated Fund in an account called the National Exchequer Account and shall, subject to Article 206(1) of the Constitution—

(a) pay into that account all money raised or received by or on behalf of the National Government; and

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

(3) The National Treasury shall keep the National Exchequer Account at the Central Bank of Kenya.

(4) The National Treasury shall ensure that at no time is the National Exchequer Account overdrawn.

(5) If a withdrawal from the Consolidated Fund is authorised under the Constitution or 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.

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

(7) In making payments from the Consolidated Fund to County Governments, the National Treasury shall not discriminate among those Governments, and in the event of a shortfall of funds, the National Treasury shall ensure that the allocation of available revenue is on a pro-rata basis and taking into account the provisions of Articles 203(1) and 204(1) of the Constitution.

The National Treasury to administer the

**17.** (1) The National Treasury is responsible for administering the Equalization Fund in accordance with Article 204 of the

Equalisation Fund.

Constitution.

[63]

(2) The National Treasury shall keep the Equalisation Fund in a separate account and shall—

(a) pay into that Fund all revenues paid under Article 204(1) of the Constitution; and

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

(3) The National Treasury shall maintain the Equalization Fund Account at the Central Bank of Kenya.

(4) The National Treasury shall ensure that at no time is the Equalization Fund Account overdrawn.

(5) If a withdrawal from the Equalization 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 the Controller of Budget for approval.

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

(7) Any unutilized balances in the Equalization Fund shall not lapse at the end of the financial year, but shall be retained for use for the purposes for which the fund was established.

Source of the  
Contingencies Fund.

**18.** The Contingencies Fund shall consist of such money as may, from time to time, be appropriated for the Fund by an Appropriation Act.

Responsibilities of the National Treasury in relation to the Contingencies Fund.

**19.** (1) The National Treasury shall be responsible for administering the Contingencies Fund.

(2) The National Treasury shall keep the Contingencies Fund in a separate account and shall—

(a) pay into that account all money appropriated for that Fund by an Appropriation Act; and

(b) pay from the fund without undue delay all advances made under section 20.

Power of Cabinet Secretary to make payments from the Contingencies Fund.

**20.** (1) Subject to section 21, the Cabinet Secretary may make advances from the Contingencies Fund if 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)—

(a) there is an urgent need for expenditure if in the opinion of the Cabinet Secretary it cannot be delayed until a later financial year without harming the general public interest; and

(b) there is an unforeseen need for expenditure if it has not been provided for in an Appropriation Act for the current financial year.

(3) Subject to subsection (2), the Cabinet Secretary shall through the regulations, prescribe suitable criteria for the purposes of subsection (1) provided that regulations made under this subsection shall not take effect before they are approved by the National Assembly.

Capital of the Contingencies Fund.

**21.** The permanent capital of the Contingencies Fund shall not exceed ten billion Kenya shillings.

Cabinet Secretary to seek Parliament's approval for payments made from the Contingencies Fund.

**22.** (1) Within two months after a payment from the Contingencies Fund is made under section 20, 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 approval of Parliament for the payment.

(2) If the 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 within fourteen days after it next sits.

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

(4) Any unutilized balances in the Contingencies Fund shall not lapse at the end of the financial year, but shall be retained for use for the purposes for which the fund was established.

Reporting responsibilities of the National Treasury with respect to the Contingencies Fund.

**23.** (1) Within 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

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 has been made has spent the money for that purpose, a statement 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) statement indicating how the payment conforms to section 20.

Other National  
Government public  
funds.

[55; 66]

**24.** (1) In this section—

“administrator”, in relation to a national public fund, means a person designated by the Cabinet Secretary under sub-section (3) to administer the fund;

“national public fund” means a public fund established under subsection (2).

(2) A National Government public fund shall be established by the Cabinet Secretary with the approval of the National Assembly.

(3) For every national public fund, the Cabinet Secretary shall designate a person to be responsible for administering the fund.

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

(5) The administrator of a national public fund shall ensure that money held in the fund (including any earnings or accruals referred to in subsection (4)) is spent only for the purposes for which

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the fund is established.

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

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

(a) the administrator of the fund shall pay any amount remaining in the fund into the National Exchequer Account; or

(b) the Cabinet Secretary shall, with the approval of the National Assembly pay any deficit in the fund from the National Exchequer Account.

(8) 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) within three months after the end of each financial year, submit those statements to the Auditor-General and deliver a copy of them to the National Treasury.

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

(10) This section—

(a) applies to all other national public funds including funds earmarked for specific purposes such as the constituency development fund amongst other funds established by an Act of Parliament; and

(b) does not apply to a public fund established by the Constitution.

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**Division 4—Responsibilities of the National Treasury with respect to the budget process**

The National Treasury to prepare annual Budget Policy Statement.

[24]

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

(2) The National Treasury shall submit the approved Budget Policy Statement in subsection (1) to Parliament, by 28th 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 the County Governments in preparing their budgets both for the ensuing 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) fiscal responsibility principles and financial objectives over the medium term.

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

- (a) the Commission on Revenue Allocation;
- (b) County Governments;
- (c) the public; and
- (d) any other interested persons or groups.

(6) The regulations may prescribe the circumstances and the manner in which the persons and groups make representations about the contents of the statement.

(7) Within fourteen days after the Budget Policy Statement is submitted to Parliament, Parliament shall table and discuss a report containing its recommendations on a motion that “Parliament does adopt the report on the Budget Policy Statement”.

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

(9) The National Treasury shall publish and publicise the Budget Policy Statement within fourteen days after it has submitted it to Parliament.

The National Treasury to prepare Budget Review and Outlook Paper.

[ 25]

**26.** (1) The National Treasury shall prepare and submit to the Cabinet for approval, by 30<sup>th</sup> September in each financial year, a Budget Review and Outlook Paper.

(2) The National Treasury shall include in the Budget Review and Outlook Paper—

(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 any changes in the forecasts compared with the Budget Policy Statement, or 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 fiscal responsibility principles or the financial objectives, together with proposals to address the deviation and the time estimated to do so.

(3) Within seven days after the Budget Review and Outlook Paper has been submitted to the Cabinet, the National Treasury shall—

(a) arrange for the paper to be laid before each House of Parliament; and

(b) as soon as practicable after having done so, publish and publicise the paper.

(4) The Cabinet shall consider the Budget Review and Outlook Paper with a view to approving it, with or without amendments, within fourteen days after its submission.

The National Treasury to prepare pre-and post-election economic and fiscal reports

[26]

**27.** (1) The National Treasury shall, not earlier than four months, nor later than four months, before and after the day appointed as polling day in relation to any general election, arrange to be published a pre-election and post-election economic and fiscal update.

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

(a) detail all election related spending including but not

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limited to-

(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 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 finalized; and

(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 finalized; and

(3) If the day of the dissolution of Parliament is less than two months before the day appointed as polling day in relation to 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.

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**Division 5—Other responsibilities of the National Treasury**

Banking arrangements  
for National  
Government entities.  
[70]

**28.** (1) The National Treasury is responsible for authorising the opening, operating and closing of bank accounts for all National Government entities, except as otherwise provided by another written law.

(2) The National Treasury shall establish a treasury single account through which payments of money to National Government entities, excluding state corporations, are to be made.

(3) An accounting officer for a National Government entity shall not authorise a bank account of the entity to be overdrawn beyond the limit authorized by that entity.

(4) 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 under section 73;

or

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

(5) The National Treasury shall keep complete and current records of all bank accounts for which they are responsible under the Constitution, this Act or any other written law.

Management of cash at  
the National  
Government level.

**29.** (1) The National Treasury shall establish a framework within which the National Government shall manage its cash

[73]

transactions.

(2) Every National Government entity, other than a state corporation, shall submit an annual cash plan to the National Treasury in a form and manner directed by that Treasury.

(3) The National Treasury may invest, for such periods and on such terms and conditions (if any) as may be prescribed by the regulations, any money kept in a bank account of the National Government.

(4) Except as otherwise provided by written law—

(a) all interest received from investments made under subsection (3); and

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

(5) The National 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 such costs, charges or expenses are payable from the National Exchequer Account.

Reviewing legislation  
for Procurement of  
goods and services.

Cap. 412C

[83]

**30.** (1) For the purposes of this Act, all procurements of goods and services required for the purposes of the National Government or a National Government entity are to be carried out in accordance with Article 227 of the Constitution and the relevant legislation on Procurement and Disposal of assets.

(2) The National Treasury shall be responsible for

reviewing existing legislation regarding Government procurement and disposal of assets, including public private partnership arrangements, with a view to proposing amendments or new legislation applicable to both the National Government and County Governments in order to ensure compliance with Article 227 of the Constitution.

National Treasury to report on National Government, National Government entities and County Government loans.

[57]

**31.** (1) The National Treasury shall submit to Parliament, a report of all loans made to the National Government, National Government entities and County Governments, within seven days after receiving a request to do so from either House of Parliament.

(2) At the end of each quarter, the Cabinet Secretary shall submit a report to Parliament on new loans obtained from outside Kenya or denominated in foreign currency specifying the lender(s) and borrower, the circumstances giving rise to the borrowing, the amount and the currency in which it is expressed, the terms and conditions of the borrowing and any further information which the Cabinet Secretary considers appropriate.

(3) The National Treasury shall include in the report the following 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 in subsection (3) is submitted;
- (e) the purpose for which the loan was used and the

perceived benefits of the loan; and

(f) such other information as the Cabinet Secretary considers appropriate.

The National Treasury  
to report on National  
Government  
guarantees.

[57A]

**32.** (1) The National Treasury shall submit to Parliament, a record of all guarantees given to the National Government, within seven days after receiving a request to do so from either House of Parliament.

(2) The National Treasury shall, with respect to every such guarantee, specify the following information in the record:

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

(b) the principal of that loan;

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

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

(ii) the terms of its repayment.

(3) Within two months after the end of each financial year, the Cabinet Secretary shall publish a report giving details of the guarantees given by the Government during that year.

The National Treasury  
to submit National  
Government debt  
management strategy  
to Parliament annually.

[57B]

**33.** (1) On or before 30<sup>th</sup> April in each year, the National Treasury shall submit to the 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 National Treasury 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 National Treasury shall include in the statement the following information:

(a) the sources of loans made to the National Government and the nature of guarantees given by that Government;

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

(c) the assumptions underlying the debt management strategy;

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

(4) As soon as practicable after the statement has been submitted to the Parliament as required by this section, the Cabinet Secretary shall publicise the statement in such places and in such manner as will bring it to the attention of the public.

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

**34.** On being requested to do so by either House of Parliament, the National Treasury shall prepare and submit to that House a report on any matter relating to its responsibilities as it may specify.

#### **Division 6—National Government budget process**

Stages in the budget process.

**35.** The budget process for the National Government in any

[34.]

financial year comprises the following stages:

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

(b) making overall estimates of National Government revenues and expenditures;

(c) preparing the Division of Revenue Bill and County Allocation of Revenue Bill on the amount of revenue to be shared between the National Government and County Government taking into account the recommendations of the Commission on Revenue Allocation.

(d) preparing budget estimates for the National Government;

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

(f) enacting a draft appropriation Bill and any other Bills required to implement the National Government's budgetary proposals;

(g) implementing the approved budget;

(h) evaluating and accounting for, the National Government's budgeted revenues and expenditures; and

(i) reporting on those budgeted revenues and expenditures.

Cabinet Secretary to  
manage budget process  
at national level

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

[35]

(2) Not later than 30<sup>th</sup> 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 can participate in the budget process;

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

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

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

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

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

Cabinet Secretary to submit budget estimates and other documents to the Cabinet for approval.

**37.** (1) The Cabinet Secretary shall submit to the Cabinet for its approval—

(a) the budget estimates and other documents supporting

[36]

the budget; and

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

in sufficient time to meet the deadlines specified in this section.

(2) Following approval by Cabinet, the Cabinet Secretary shall submit the following documents :

(a) the Budget Policy Statement, the Division of Revenue Bill and the County Allocation of Revenue Bill to Parliament by 28<sup>th</sup> February in each financial year; and

(b) the budget estimates (excluding those for Parliament and the Judiciary), the documents supporting those estimates, the Appropriation Bill and any other Bills required to implement the National Government budget to the National Assembly by 30<sup>th</sup> April in that year.

(3) The accounting officer for the Parliamentary Services Commission shall, not later than 30<sup>th</sup> 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 30<sup>th</sup> 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 (4),

the accounting officer for the Parliamentary Services 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) for that purpose, may make and publish rules with which those who wish to participate in the process must comply.

(6) The Cabinet Secretary shall submit to the National Assembly no later than the 15<sup>th</sup> 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 timeframe 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 as required by this section, the Cabinet Secretary shall publicise those documents.

Budget documents to be submitted to the National Assembly by Cabinet Secretary.

[37]

**38.** (1) The Cabinet Secretary shall submit to the National Assembly the following budget documents for each financial year:

(a) a budget summary that includes—

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

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

(b) budget estimates that 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 Art. 216(4) of the Constitution;

(iii) all revenue allocations to County Governments from the National Government, 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 and liabilities to be made or incurred by the National Government for which an appropriation is not to be made by an Appropriation Act, together with the constitutional or national legislative authority for any such payments or liabilities;

(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(s).

(2) The Cabinet Secretary is responsible for determining the nature of information that is to be presented in the budget estimates and the form of its presentation.

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

(a) is accurate, precise and informative;

(b) is sufficiently flexible to facilitate budget implementation;

(c) clearly identifies the entities, and accounting officers who are responsible for administering those appropriations; and

(d) clearly identifies the appropriations by vote and programme

National Assembly to  
consider budget  
estimates

[38]

**39.** (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 Bills required to implement the budget to be assented to by 30<sup>th</sup> June each year.

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(2) Before the National Assembly considers the estimates of revenue and expenditure, the relevant committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly, and in finalizing these recommendations to the House, the committee shall seek the views of the Cabinet Secretary on the proposed recommendations.

(3) The National Assembly can amend the budget estimates of the National Government only in accordance with the policies set out in the Budget Policy Statement adopted by Parliament and only if—

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

(b) any proposed reduction in expenditures is used to reduce the deficit.

(4) The National Assembly shall consider all money Bills in accordance with Article 114 of the Constitution, and only if —

(a) any increase in expenditure proposed in the Bill shall be balanced by a reduction in expenditure in the Appropriations Act ; or

(b) any proposed reduction in expenditures is used to reduce the deficit.

(5) Within twenty one days after the National Assembly has approved the budget estimates, the National Treasury shall—

(a) consolidate them; and

(b) publish and publicise them.

(6) The National Treasury shall take all reasonably practicable steps to ensure that the approved budget estimates are

prepared and published in a form that is readily intelligible to members of the public.

Consideration by Parliament of Division of Revenue and County Allocation of Revenue Bills

**40.** Within fourteen days after the Division of Revenue and County Allocation of Revenue Bills have been presented to Parliament, Parliament shall consider the Bills with a view to approving them, with or without amendments.

Limited power of accounting officer of National Government entity to reallocate appropriated funds.

[40]

**41.** (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-wages expenditure.

(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 utilized;

(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) The regulations may provide for the reallocation of funds within Sub-votes or programs.

National Government  
to submit to National  
Assembly  
supplementary budget  
in certain  
circumstances

[41].

**42.** (1) The National Government shall submit to the National Assembly for approval, a supplementary budget in support of money spent under Article 223 of the Constitution.

(2) When the National Assembly has approved spending under subsection (1), an appropriation Bill must 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.

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

[42]

**43.** (1) An appropriation that has not been spent at the end of the financial year for which it was appropriated lapses at the end of that financial year.

(2) If, 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.

(3) Subsection (2) is subject to any other provision of a written law.

**Division 7—Responsibilities of Cabinet Secretary and functions  
of National Government with respect to public finance**

Overall responsibility  
of Cabinet Secretary  
responsible for finance

**44.** In addition to the functions imposed on the Cabinet Secretary by the Constitution, this Act, and any other written law, the Cabinet Secretary—

(a) has responsibility for overseeing formulation of macro-economic and financial policies of the Government;

(b) shall 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 identify and resolve their financial problems;

(d) shall in performance of duties and functions under this Act—

(i) seek views from County Governments on the proposed macro-economic and financial policies using the Budget and Economic Council established under this Act;

(ii) share with National Government entities and County Governments any findings that may assist the National Government entity and County Governments in improving their financial management;

(iii) upon detecting any emerging or impending financial problems in a National Government entity or County Government, alert the National Government entity or County Government of those problems; and

(iv) assist the National Government entity and County Government to avert or resolve financial problems.

Stopping transfer of funds to National Government entities and County Governments.

**45.** (1) In accordance with clause (3) of Article 225 of the Constitution, the Cabinet Secretary is, subject to clauses (4) to (7) of that Article, authorised to stop the transfer of funds to a National Government entity or County Government, but only for a serious material breach, or persistent material breaches of this Act, for a period not exceeding 60 days.

(2) In the case of a County Government, the stoppage of transfer of funds shall not exceed 50 per cent of the funds due to a County Government.

(3) The Cabinet Secretary shall submit a report to Parliament to approve the stoppage within a period not exceeding 30 days.

(4) The Cabinet Secretary shall inform the Controller of Budget of:-

(a) the date from when the stoppage takes effect;

(b) the nature of serious material breaches, or persistent material breaches, committed by a National Government entity or a County Government; and

(c) the recovery plan that has been instituted.

(5) Where the Cabinet Secretary has applied to Parliament for an extension of stoppage for a period beyond the 60 days allowed by the Constitution, as soon as it is practicable after being informed of the decision to extend the period, the Controller of Budget shall prepare a report giving an independent opinion and findings on details of the breach or breaches and submit the report to Parliament in such a manner to allow Parliament to approve the stoppage of funds or otherwise within the thirty days after the decision to stop the transfer was made.

(6) Where the Cabinet Secretary has not applied to Parliament for an extension of period of stoppage, the stoppage shall lapse and all funds held during the period of stoppage released within a period not exceeding 15 days.

Conditions in which National Government or National Government entities may receive grants and donations

**46.** (1) In this section and section 47 —

(a) “grant” means an arrangement for the provision of financial assistance by the National Government —

(i) under which public money is paid to 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 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,

but does not include—

(i) procurement of goods or services by a National Government entity;

(ii) payment of compensation or a benefit to which a person is entitled, including payment of an entitlement established by legislation or by a government program;

(iii) payment of an intergovernmental transfer by the National Government to a County Government;

(iv) an investment or loan; or

(v) any other payment specified by legislation or by regulations not to be a grant.

(b) “grant recipient” means an incorporated or unincorporated body not otherwise authorised to control or spend

money under this Act;

(c) “intended beneficiaries” means the members of the public whom the projects or public services financed by a grant are intended to benefit;

(d) “third party” means a person other than a public officer.

(2) This section applies to the following -

(a) the National Government; and

(b) a National Government entity;

(3) The National Government or a National Government entity may receive a grant or donation from a development partner only if the grant or donation has previously been approved by the Cabinet Secretary and only as provided by this section.

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

(5) If a project that is being financed by a grant or donation requires National Government funding, the project may be started only when—

(a) the required funding has been appropriated in accordance with this Act or is otherwise authorized by law; or

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

(6) 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.

(7) The recipient of a grant or donation shall administer and account for the grant or donation by using its own administrative,

accounting and auditing procedures, including 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.

(8) The Cabinet Secretary may grant an exemption in writing from the requirements of subsection (7) if, in the opinion of the Cabinet Secretary, it is in the public interest to do so.

Regulations on grant administration

**47.** (1) The regulations 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 authorized to receive, control or pay public money as a grant; and

(e) measures to ensure that any third party that is authorized 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) The 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 receipts;

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

relation to 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—

(a) receive, have custody of, or pay public money otherwise than in accordance with an authorization 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.

Authority for  
borrowing by National  
Government.

[75A]

48 (1) The Cabinet Secretary may, on behalf of the National Government, raise a loan for that Government's purposes, only if the loan and its terms and conditions are set out in writing and accord with—

(a) section 49;

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

(c) the debt management strategy of the National

Government over the medium term.

(2) Such a loan may be raised either within Kenya or elsewhere

Obligations and restrictions with respect to National Government borrowing.

49(1) In borrowing money, the National Government shall ensure that its financing needs and payment obligations are met at the lowest possible cost that 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 only if it is authorised to do so by this Act or any other written law and such borrowing shall not exceed a level set by the National Assembly (if any).

(3) The National Government may borrow money only for purposes prescribed by regulations made for the purpose of this subsection.

(4) A public debt incurred by the National Government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines that all or part of the debt that would otherwise be a charge on the Consolidated Fund should to be a charge on another public fund established by the National Government or any of its entities.

(5) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are paid into the Consolidated Fund or into any other public fund established by the National Government or any of its entities as that Secretary may determine.

(6) The Cabinet Secretary may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes of the National Government as that Secretary considers necessary.

(7) The Cabinet Secretary may, 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 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 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.

Borrowing by National Government entities.

[77]

50. (1) A National Government entity may borrow only if it is authorised to do so by an Act of Parliament and in accordance with that Act.

(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 expressly agreed to be liable.

Persons who are authorised to execute loan documents at National Government level.

[78]

51. (1) The Cabinet Secretary and any person designated by the Cabinet Secretary in writing are authorised to execute loan documents for borrowing by the National Government.

(2) 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 office holder authorised by a written law to execute such documents on behalf of the entity.

National Government may issue securities only if authorised by this Act.

[79]

52. (1) The National Government may issue National Government securities (whether for money that it has borrowed or for any other purpose) only if it is expressly authorised to do so by this Act.

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

(3) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by issuing National Government securities.

(4) National Government securities—

(a) can be issued in one or more series; and

(b) may be issued in accordance with loan agreements entered into between the National Government and the Central Bank of Kenya and one or more or such other banks, financial institutions, or security dealers as the Cabinet Secretary may determine.

(5) Any such agreements may be amended from time to time.

(6) The Cabinet Secretary shall ensure that every National Government security issued under this section is given in the name of the Republic of Kenya.

(7) 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 purpose under this Act.

(8) For the purposes of subsection (7), it is enough if a facsimile of the signature of a person who is required to execute a National Government security under this section is reproduced on the security.

(9) The Cabinet Secretary may vary the terms and conditions of a National Government security, only with the consent of its holder.

(10) At the request of the holder of a National Government security, the Cabinet Secretary—

(a) may authorise the principal, or any interest payable in respect of the principal, to be paid at a place in Kenya

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or elsewhere different from the place otherwise provided; and

(b) may revoke such an authorisation and substitute another one.

(11) A person to whom an authorisation is given under subsection (10) shall comply with the authorisation.

(12) The Cabinet Secretary may authorise the issue of a new 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.

(13) Subject to any other written law, secondary trading of National Government securities may be carried out only in such manner as may be prescribed by regulations made for the purposes of this subsection. In this subsection, “secondary trading” means any activity leading to a change in the ownership of a National Government security before its redemption date.

(14) Irrespective of anything in this section to the contrary, government securities may be issued and exist in electronic form as a debt entry.

(15) 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.

(16) 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.

(17) Duty is not chargeable under the Stamp Duty Act for the issue of a National Government security.

Register of National Government Securities and appointment of Registrar(s).

53. (1) The Cabinet Secretary shall appoint a suitably qualified person or persons (as the case may be), to be a Registrar of National Government Securities.

(2) The Registrar shall establish and maintain a register, called the Register of National Government securities, and shall record in the register details of all such securities as are issued by or on behalf of the National Government.

(3) An entry in the register relating to a National Government security is evidence of the ownership of the security unless the contrary is proved.

(4) The holder of a National Government security that is recorded in the register may request the Registrar in writing to amend the entry relating to the security.

(5) If, on receipt of a request under subsection (4), the Registrar is satisfied that the request complies with the guidelines (if any) 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 security.

(6) 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.

(7) 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.

Power of National Government to enter into derivative transactions.

[80]

54. (1) The National Government may enter into derivative transactions, either directly or indirectly through an intermediary, but only in a manner prescribed by the regulations.

(2) The Cabinet Secretary may, on behalf of the National Government, enter into a derivative transaction if it appears to that Secretary to be in the public interest to do so.

(3) The Cabinet Secretary may enter into a derivative transaction on such terms and conditions, within the scope prescribed by the regulations, as that Secretary considers appropriate.

(4) Money required to be paid by the National Government under a derivative transaction entered into under this section is a charge—

(a) on the Consolidated Fund; or

(b) if the Cabinet Secretary decides that the money should be a charge on some other public fund established for the purpose of making such payments, on that other fund.

(5) Any expense incurred in connection with a derivative transaction entered into by the National Government or by the Cabinet Secretary on that Government's behalf is a charge on the

Consolidated Fund and no further appropriation than this section is required.

Power of National Government to lend money.  
[81]

55. (1) The National Government is authorised to lend money but only in accordance with terms and conditions prescribed by the regulations.

(2) A National Government entity may lend money only if authorised to do so by an Act of Parliament.

(3) Even if an Act of Parliament authorises a National Government entity to lend money, it may do so only in accordance with such regulations (if any) as are prescribed for the purpose of this subsection.

(4) The Cabinet Secretary may, in relation to any money lent by the National Government under this section—

(a) accept all money payable under the loan in any currency that Secretary considers appropriate; and

(b) agree at any time to the variation of any security given in respect of the loan,

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

(a) from an appropriation for development expenditures; or

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

(6) 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.

(7) 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 that Government.

Power of Cabinet  
Secretary to guarantee  
loans on behalf of the  
National Government

56. (1) Subject to subsection (2), the Cabinet Secretary may guarantee the loan of a borrower on behalf of the National Government.

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

(d) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the National Government; and

(e) 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;

(f) the Cabinet Secretary takes into account the equity between the National Government's interests and the County Governments so as to ensure fairness;

(g) the borrower complies with any conditions

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imposed by the Cabinet Secretary in accordance with the regulations;

(h) the loan conforms to any other criteria prescribed by the regulations for the purposes of this section.

(3) Where the Cabinet Secretary declines a request by a County Government to guarantee a loan, the County Government may petition Parliament for a review of the Cabinet Secretary's decision.

(4) A House of Parliament may approve a draft loan guarantee document as provided by subsection (2)(e)(ii) only if satisfied that the guarantee is—

(a) in the public interest;

(b) the borrowers 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) geared towards stimulating economic growth in a County Government.

(5) To enable the Houses of Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection 2(e)(ii), the Cabinet Secretary shall prepare and submit to each of the each House of Parliament a paper that—

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

(b) specifies—

(i) the National Government's total contingent

liability under guarantees given under this section; and

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

Cabinet Secretary to submit a statement to Parliament within fourteen days after guaranteeing a loan

57. Within fourteen days after the guarantee is entered into, the Cabinet Secretary shall publish and submit to Parliament a statement that—

(a) states that the guarantee is entered into; and

(b) contains 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 the regulations for the purposes of this subsection.

Where money is payable in respect of a guarantee.

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

(2) Money payable under such a guarantee may be paid only if the payment has been approved by the Controller of Budget.

(3) If money is paid out of the Consolidated Fund in respect of 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—

- (a) details of the guarantee;
- (b) the circumstances giving rise to the payment; and
- (c) such further information as the Cabinet Secretary considers relevant.

Recovery of amounts paid in respect of a guarantee.

59. (1) Money paid by the Cabinet Secretary under 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) by proceedings brought in a court of competent jurisdiction, be recoverable from the borrower as a debt due to National Government.

(2) If the Cabinet Secretary considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over time, the Cabinet Secretary may enter into an agreement with the borrower to pay the debt over such period and at such intervals, and subject to such other 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 section 56 is paid into the

Consolidated Fund.

### **Division 8—Public Debt Management Office**

Establishment of the  
Public Debt Management  
Office

60. There is established a Public Debt Management Office within the National Treasury.

Objectives of the Public  
Debt Management Office

61. The Public Debt Management Office shall have the following objectives:

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

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

(c) ensure that the benefits and burden of public debt is shared between current and future generations.

Functions of the Public  
Debt Management Office

62. The functions of the Public Debt Management Office shall include:

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

(b) Maintain a reliable debt data base for all loans taken by the National Government, County Governments, their entities including those loans guaranteed by the National Government;

(c) Preparation and update of 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) Act as the principal in the issuance of Government debt securities on behalf of the National Treasury;
- (f) Monitor and evaluate all borrowings and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy;
- (g) Process 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.

Functions of the Cabinet Secretary

63. The Cabinet Secretary shall consider and advise on policies, strategies and procedures to be adopted by the Public Debt Management office to achieve its objectives.

Relationship with the National Treasury

64. (1) Cabinet Secretary responsible for finance shall:

- (a) determine the policy and financial framework 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 best-practice 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 responsible for finance the following reports:

- (a) Medium Term Debt Strategy consistent with the Budget Policy Statement;
- (b) Government borrowing plan for the approved Annual Budget;
- (c) Statistical and analytical reports on debt and borrowing; and
- (d) Annual performance reports of the Public Debt management Office.

(3) The Cabinet Secretary may appoint agents to provide technical advice or manage administrative functions for the management of debt provided that control and accountability for these functions remains with the Cabinet Secretary.

Relationship with  
County Treasuries

65. (1) At the request of the County Treasury, the Public Debt Management Office shall assist the County Governments in debt management and borrowing.

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

efficiently.

**Division 9—Responsibilities of National Government entities  
and their accounting officers**

Cabinet Secretary to  
designate accounting  
officers for National  
Government.

[16]

66. (1) The Cabinet Secretary shall, in writing, designate persons (called accounting officers) to be responsible for managing the finances of such National Government entities and the Parliamentary Service Commission as are specified in the designation.

(2) The Cabinet Secretary shall ensure that each National Government entity and the Parliamentary Service Commission has an accounting officer designated for it.

(3) The accounting officer of the Judiciary is as provided for in Article 161 (2) (c) of the Constitution.

Responsibilities of  
accounting officers  
designated for  
National Government  
entities, Parliament  
and the Judiciary.

[17]

67. (1) An accounting officer designated under the Constitution or section 66 of this Act, is accountable to the National 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

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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 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) 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), bring the matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly;

(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 of the entity in conformity with the strategic plan referred to in paragraph (g);

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

(j) if the entity is a state corporation, submit the estimates to the Cabinet Secretary responsible for that state corporation and to the Cabinet Secretary;

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(k) within 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 National Treasury;

(l) take appropriate measures to resolve any issues resulting from an audit that remain outstanding;

(m) provide the National Treasury with any information it may require to fulfil its functions under this Act; and

(n) carry out such other responsibilities as may be specified by the Cabinet Secretary.

(3) If the concerns referred to in paragraph (f) are not adequately addressed by the Cabinet Secretary, Chief Justice and the Speaker of the National Assembly, the accounting officer shall bring those concerns to the attention of the Controller of Budget, the Auditor General and the National Treasury.

(4) Not later than three months after the National Assembly has adopted a report by a committee of the 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 National Assembly; and

(b) submit the report to the National Assembly with a copy to the National Treasury.

(5) Not later than one month after receiving a report under subsection (4), the National Treasury shall submit the accounting officer's report, together with any comments on the report by that

Treasury, to the National Assembly.

Power of accounting officer for a National Government entity to write-off losses.

[48]

68. (1) An accounting officer for a National Government entity may write-off any loss not exceeding an amount, and in circumstances, prescribed by the regulations for the purposes of this subsection.

(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 the regulations for the purposes of this subsection.

(3) The Cabinet Secretary may, with the approval of Cabinet, authorise such an accounting officer to write off a loss exceeding the further 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.

Spending authority of accounting officer.

[49.]

69. (1) If a National Government entity has a direct charge on the Consolidated Fund under the Constitution or an Act of Parliament, the accounting officer who has responsibility for that entity has the authority to spend money under a direct charge in accordance with purposes specified in law.

(2) An appropriation is not required for the spending of money under subsection (1).

Accounting officer for National Government entity may make cash

70. (1) An accounting officer for a National Government entity may authorise payment of cash advances to public

advances.

officers to be used to enable those officers to make payments for the entity or in the course of their duties.

[71]

(2) A public officer to whom such a cash advance has been made shall account for the use of the advance.

(3) A public officer to whom a cash advance has been made under subsection (1) shall return the cash advance 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; and

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

(4) 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 (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 the regulations for the purpose of this subsection; and

(c) the debt (including with 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.

Accounting officer to be responsible for managing assets and liabilities of National Government entities.

71. (1) The accounting officer for a National Government entity—

(a) is responsible for the management of the entity's

[84]

assets and liabilities; and

(b) shall manage those assets in such a way as to ensure that that Government 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 at the most competitive price and at the lowest possible cost and 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 under Article 227 of the Constitution.

(4) The 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.

National Government  
entity to maintain  
internal auditing  
arrangements.

[85]

72. (1) Every National Government entity shall ensure that—

(a) it has appropriate arrangements in place for internal audit; and

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

(2) The regulations may prescribe requirements to be complied with in conducting any such audits.

(3) A National Government entity shall ensure its

arrangements for conducting internal audits 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 for internal auditing.

(5) Every National Government entity shall establish an audit committee whose composition and functions are to be such as are prescribed by the regulations.

Public officers and accounting officers found to have engaged in improper conduct liable to be disciplined.

73. (1) If an accounting officer reasonably believes that a public officer employed by or in a National Government entity is engaging in or has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall-

[18]

(a) take appropriate measures to discipline the

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public officer in accordance with the laid down procedures; or

(b) refer the matter to an appropriate disciplinary body to take such action within its powers as it considers appropriate.

(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 the Cabinet Secretary considers appropriate to address the matter; or

(b) refer the matter to an appropriate disciplinary body to take such action within its powers as it considers appropriate.

(3) The measures referred to in subsection (2) (a) include revoking the accounting officer's designation as such.

(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;

(b) undermines any financial management procedures or controls that apply to the entity; or

(c) makes or permits expenditure that is unlawful or has not been authorised by the entity.

(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.

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**Division 10—Receivers and collectors of National Government  
revenue**

Receivers of  
National  
Government  
revenue.

[19]

74. (1) The Cabinet Secretary shall, in writing, designate persons (called receivers of National Government revenue) to be responsible for receiving and accounting for such National Government revenue 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 ensuring that the revenue for which the receiver is responsible is collected, received, and is accounted for.

Receiver may  
authorise any public  
officer to be  
collector of National  
Government  
revenue.

[20]

75. (1) A receiver of revenue for the National Government may authorise any public officer employed by that Government or any of its entities to be a collector of revenue for the purpose of collecting revenue for that Government and remitting it to the receiver.

(2) Any other public officer, other than a receiver of revenue or collector of revenue for the National Government, who collects revenue for that Government shall, within three days after receiving it, deliver the revenue to a receiver or collector of revenue for that Government.

Limitation of  
powers of Kenya  
Revenue Authority.

Cap. 469.

76. (1) The Kenya Revenue Authority is, in respect of the revenue that it is authorised to collect under the Kenya Revenue Authority Act, a collector of National Government revenue for

[21] the purposes of this Part.

(2) The Authority may not withdraw any funds from the Consolidated Fund, except as authorised by an Act of Parliament.

(3) The Kenya Revenue Authority shall keep a full record of all amounts withdrawn as may be authorized by an Act of Parliament, including the names of the persons to whom the amounts were refunded, the dates of, and the reasons for, the refunds.

### **Division 11—Obligations of public officers**

Obligations of public officers with respect to National Government resources.

77. (1) Every public officer employed in or by a National Government entity shall comply with Article 232 of the Constitution when carrying out a responsibility imposed, or exercising a power conferred, by this Act.

(2) Every such public officer shall also—

(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 that—

(i) is lawful and authorised; and

(ii) effective, efficient, economical and transparent;

(c) within the officer's area of responsibility—

(i) ensure that adequate arrangements are made for the 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.

[22]

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**Division 12—Financial reporting by the National Treasury and National Government entities**

The National Treasury to prepare consolidated annual financial statement.

[52]

78. (1) At the end of each financial year, the National Treasury shall prepare for the National Government financial statements that consolidate the financial statements prepared in respect of all National Government entities in formats to be prescribed by the Accounting Standards Board.

(2) The National Treasury shall include in the consolidated financial statements—

(a) a statement of all money paid into and paid out of the National Exchequer Account;

(b) a summary of—

(i) the appropriation accounts and statements prepared by accounting officers under section 79; and

(ii) the statements prepared by receivers of revenue under section 80;

(c) a statement of payments (if any) made out of the National Exchequer Account that are authorised by a written law 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; and

(e) 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) Within four months after the end of each financial year, the National 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 Controller of Budget and the Commission on Revenue Allocation.

Annual reporting by  
accounting officers.

[53]

79. (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 amounts actually 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 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) the recurrent Vote;

(ii) the development Vote; and

(iii) funds and deposits; and

(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) Within 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

(b) deliver a copy of the statement to the Controller of Budget, the National Treasury and the Commission on Revenue Allocation.

(5) In the case of an entity that is a state corporation, the accounting officer shall also submit a copy of the corporation's financial statements to the Cabinet Secretary responsible for that corporation.

Annual reporting by  
receivers of revenue.

[54]

80. (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) Such an account shall include—

(a) a statement of receipts and disbursement in such form as the National Treasury may direct; and

(b) a statement of arrears of revenue.

(3) Within 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

(b) deliver a copy to the National Treasury and the Commission on Revenue Allocation.

(4) Within three months after the end of each financial year, a receiver of revenue for the National Government shall submit to the National Assembly 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 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; and

(d) the reasons for waiver or variation.

Accounting officer to  
prepare quarterly  
reports for National  
Government entity.

[56]

81. (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) Within fifteen days after the end of each quarter, the accounting officer shall—

(a) submit the quarterly report to the National Treasury; and

(b) deliver a copy to the Controller of Budget and the Commission on Revenue Allocation,

(4) Within 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;

(b) deliver a copy of the reports to the Controller of Budget and the Commission on Revenue Allocation; and

(c) publish and publicise them.

(5) In the case of an entity that is a state corporation, the

accounting officer for the corporation shall also submit a copy of the quarterly report to the Cabinet Secretary responsible for the corporation.

Administrators of national public funds to prepare annual financial statements. 82. The administrator of a national public fund established by the Constitution shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

Annual reporting by Administrators of national public funds. 83. Within three months after the end of each financial year, the administrator of a national public fund established by an Act of Parliament shall -  
 (a) submit the financial statements prepared under section 82 to the Auditor General; and  
 (b) deliver a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation.

**Division 13—Additional requirements for state corporations and Government-linked corporations**

Definitions for purpose of Division 13. [86]

84. For the purposes of this Division—  
 (a) “Government-linked corporation” means a corporation in which the National Government is a shareholder with less than fifty percent of the share capital of the corporation;  
 (b) “invest” means any form of funding, or potential funding, provided to a corporation, including providing

share capital, loans, guarantees, grants or subsidies.

Establishment and  
dissolution of a state  
corporation.

[86]

85. (1) A state corporation may be established or dissolved only with the prior approval of the Cabinet, which may be given only after taking into account any recommendations of the National Treasury regarding the financial implications of establishing or dissolving the corporation.

(2) The regulations shall prescribe the criteria to be used in establishing or dissolving State Corporations.

Restrictions on  
National  
Government  
investing in  
government-linked  
corporations.

[86A].

86. (1) The National Government may not invest-

(a) in a corporation if the investment would result in the corporation becoming a Government-linked corporation; or

(b) in a Government-linked company;

without the prior approval of the Cabinet, which may be given only after taking into account any recommendations of the National Treasury regarding the financial implications of the investment.

National Treasury  
responsible for  
monitoring financial  
performance of state  
corporations.

[87]

87. (1) The National Treasury is responsible for monitoring—

(a) the financial performance of state corporations;

and

(b) the performance by those corporations of any functions or activities that affect their financial performance.

(2) In particular, the responsibilities of the National Treasury under subsection (1) include—

Cap. 446.

(a) analysing financial and other reports that are required to be prepared by a state corporation under the State

Corporations Act or any other Act;

(b) reporting to the Cabinet Secretary on the performance of those corporations; and

(c) making recommendations to the Cabinet Secretary as to how a particular state corporation could improve its performance.

Annual reporting by  
the National  
Treasury on state  
corporations[88]

**88.** (1) Within six months after the end of each financial year, the National Treasury shall prepare and submit to the National Assembly a consolidated report summarising the extent of National Government involvement or investment in, or funding of, all state corporations and 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 corporation;

(b) the amount of National Government shareholding, directly or indirectly, in the corporation;

(c) any changes in the shareholding of the 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 corporation during the financial year;

(e) the amount of any loans made by the National Government to the corporation, and the amount of any guarantees issued by the National Government in respect of the corporation, during the financial year;

(f) the cumulative amount of undischarged loans and

guarantees in respect of the corporation;

(g) the amount of the profit or loss of the corporation for the financial year;

(h) the amount of any revenue received by the National Government from the corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the 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.

(j) an assessment of the financial and related non-financial performance of the corporation for the financial year;

(k) a cost-benefit analysis of the National Government's continued involvement or investment in, or funding of, the corporation.

(3) The National Treasury shall submit a copy of the report to the Controller of Budget, the Commission on Revenue Allocation and to the Auditor-General.

#### **Division 14—Miscellaneous matter**

House of Parliament  
may extend time  
limits.

89. A House of Parliament may, by resolution, extend any time limit for submitting a statement or other document required to be submitted to it under this Part.

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**Division 15—Resolution of Operational and Financial Problems of National Government Entities and County Governments**

Primary responsibility for avoiding, identifying and resolving financial problems

90. (1). The primary responsibility to avoid, identify and resolve financial problems in a National Government entity or County Government rests with the National Government entity or County Government itself.

(2) A National Government entity or County Government must ensure that the conduct of financial management is in accordance with the constitution and this Act.

(3) If a National Government entity or County Government encounters a serious financial problem or anticipates serious challenges in performing its financial function or meeting its financial commitments, it must immediately:

(a) seek solutions to resolve the financial problems; and

(b) notify—

(i) the Cabinet Secretary or the County Secretary ( as the case may be);

(ii) the Controller of Budget; and

(iii) the Commission on Revenue Allocation,

of the nature of the financial problem and proposed remedial measures.

Assessment of the need for national government intervention.

91. (1) If the Cabinet Secretary becomes aware of financial problems in a National Government entity or County Government, the Cabinet Secretary must promptly:-

(a) consult—

(i) the Accounting Officer, in relation to the National Government entity; or

(ii) the Cabinet Secretary responsible for devolved government and the respective County Secretary, in relation to the County Government,

to determine the facts.

(b) assess the seriousness of the problem and the proposed remedial measures or solution to the financial problem by the National Government entity or County Government; and

(c) determine whether the situation constitutes a serious material breach or persistent breach requiring intervention under Article 225 of the Constitution.

(2) In the case of 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 or comply with obligations imposed under the Constitution or any other Act; or

(b) otherwise meet its financial commitments,

the Cabinet Secretary shall consider whether or not to take action under the provisions of section 45.

(3) In the case of a County Government —

(a) if the financial problem has met conditions for intervention in terms of Article 190(3); or

(b) is unable to meet its financial commitments,

this shall constitute a serious material breach or persistent material breach for purposes of stoppage of funds under Article 225(3) of

the Constitution through the process in section 45.

Mandatory  
intervention by  
Cabinet Secretary

92. (1) If a National Government entity or County Government, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary must promptly—

(a) direct the relevant national department or departments within the National Treasury or County Government to—

(i) determine the reasons for the crisis in its financial affairs;

(ii) assess the National Government entity or County Government's financial state;

(iii) prepare an appropriate recovery plan for the National Government entity or County Government;

(iv) recommend appropriate changes to the National Government entity or County Government's budget and revenue raising measures that will give effect to the recovery plan; and

(v) submit to Cabinet Secretary a report within a period not exceeding 90 days;

(b) consult the respective County Governor to obtain the County's cooperation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan;

(c) if the report recommends an intervention which will require the Cabinet Secretary to stop the transfer of funds to the National Government entity or County Government in accordance with Article 225(3), the Cabinet Secretary shall:-

- (i) inform the Controller of the Budget;
- (ii) submit a copy of the report, together with his recommendations to Parliament within a period not exceeding 30 days from the date of receipt of the report; and
- (iii) within fourteen days on receipt of the report, stop the transfer of funds to the National Government entity or County Government.

Criteria for determination of operational and financial problems

93. (1) When determining whether the conditions for mandatory intervention referred to in section 92 are met, all relevant facts must be considered.

(2) The following factors, singly or in combination, may indicate that a National Government entity or County Government is in serious breach of its obligations to meet its financial commitments:

(a) the National Government entity or County Government has failed to make any debt service payments as and when due;

(b) the National Government entity or County Government 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 National Government entity's or a County Government's budgeted operating expenditure; and

(c) any other acts of omission and commission stipulated in the Act, any other written law or regulation.

(3) Any recurring or continuous failure by a National Government entity or County Government to meet its financial

commitments which substantially impair the National Government entity's or County Government's ability to procure goods, service of credit, may indicate that National Government entity or County Government is in persistent breach in meeting its financial obligations.

(4) Subsections (2) and (3) do not apply to:-

(a) disputed obligations which are subject of litigation in a court of law, provided such litigations are not instituted to avoid an intervention; or

(b) obligations explicitly waived by creditors.

(5) If there is reasonable proof that the dispute under subsection (4)(a) was instituted to avoid an intervention, the Cabinet Secretary may refer the matter to the President in terms of Article 192 of the Constitution.

Establishment of a department responsible for County Financial Recovery services

94. (1) There shall be established a department within the National Treasury responsible for County Financial Recovery Services as well as other functions that may be assigned to it.

(2) Among other responsibilities, the department shall perform the following functions—

(a) upon determination of financial or operational problems by the Cabinet Secretary under section 93, assist the Cabinet Secretary to prepare a financial recovery plan for a County Government, or with the approval of the Cabinet Secretary instruct any suitably qualified person to prepare the plan;

(b) upon the request by the Cabinet Secretary, monitor the implementation of any financial recovery plans that it has prepared, and may recommend such amendments and revisions as appropriate;

(c) upon request by the County Government experiencing financial problems, and in coordination with any other National or County level efforts, assist the County Government to identify the causes of, and potential solutions for these financial problems;

(d) may, with the approval of the Principal Secretary, obtain the services of any financial expert to perform any specific work for the Service;

(e) may collect information on county financial problems and best practices resolving such problems; and

(f) monitoring the implementation of county budgets for purposes of facilitating the development and management of macro-economic and financial policies.

Review of  
interventions

95. In this section and section 96—

“joint committee” means a single committee comprising of the Cabinet Secretary, the Cabinet Secretary responsible for Devolved Government and the Commission on Revenue Allocation which shall on behalf of the National Government, collectively exercise the functions specified in these two sections.

(1) The joint committee must at least once in every three months—

(a) review any discretionary national intervention referred to in section 91 or any mandatory action referred to in section 92, including—

(i) progress with resolving the County’s financial problems and its financial recovery; and

(ii) the effectiveness of any financial recovery plan; and

(b) submit progress reports and a final report on the intervention to—

(i) Parliament;

(ii) the relevant County Assembly;

(iii) the National Treasury;

(iv) the respective County Treasury; and

(v) the Controller of Budget.

(2) The joint committee may invite or enlist any other persons to assist it in performing its functions under this section.

Termination of  
Intervention

**96.** (1) A discretionary intervention in section 91 must end—  
(a) if it is terminated in terms of Article 190(5) of the Constitution; or

(b) when —

(i) the County is able and willing to fulfil the executive obligation in terms of legislation or the Constitution that gave rise to the intervention; and

(ii) the financial problem that has been caused by or has caused the failure by the County Government to comply with that obligation is resolved.

(2) A mandatory intervention referred to in section 92 must end when—

(a) the crisis in the County's financial affairs has been resolved; and

(b) the County's ability to meet its obligations to provide basic services or its financial commitments is secured.

(3) When a national intervention ends, the joint committee shall notify—

(a) Parliament;

(b) the relevant County Assembly;

(c) the relevant County Government;

(d) the Controller of Budget; and

(e) the Auditor General; and,

publish and publicise the decision.

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**PART IV—COUNTY GOVERNMENT RESPONSIBILITIES WITH RESPECT  
TO MANAGEMENT AND CONTROL OF PUBLIC FINANCE**

**Division 1A-Responsibilities of Governors and County  
Executive Committees**

Governor and  
County Executive  
Committees

**97.** (1) Each County Executive Committee under the chairmanship of their County Governor shall ensure adherence by their County Governments to—

- (a) the principles of public finance set out in Chapter 12 of the Constitution;
- (b) fiscal responsibility principles provided in section 102; and
- (c) any other requirements of this Act.

(2) The County Executive Committee shall observe principles of collective responsibility in exercise their functions under this Act.

**Division 1—Establishment of County Treasuries**

Establishment of  
County Treasuries  
[13]

**98.** (1) For each county there is established an entity of the County Government called the County Treasury.

(2) The County Treasury comprises of—

- (a) the County Secretary;
- (b) the County Principal Secretary; and
- (c) department or departments of the County Treasury responsible for financial and fiscal matters.

(3) The County Secretary is the executive head of the County Treasury.

## **Division 2—Responsibilities and Powers of a County Treasury**

General  
responsibilities of a  
County Treasury

99.(1) A County Treasury has overall responsibility for managing the financial and economic affairs of the County Government.

(2) Without limiting subsection (1), a County Treasury has the following specific responsibilities:

(a) to formulate and implement financial and economic policies in the County;

(b) to prepare the annual budget for the County (including to co-ordinating the preparation of estimates of revenue and expenditure of the County Government);

(c) to co-ordinate the implementation of the budget of the County Government;

(d) to mobilise resources for funding the budgetary requirements of the County Government;

(e) to manage the County Government's public debt;

(f) to consolidate the annual appropriation accounts and other financial statements of the County Government in a format determined by the Accounting Standards Board;

(g) to act as custodian of County Government's assets;

(h) to ensure compliance by the County Government and its entities with accounting standards prescribed and published by

the Accounting Standards Board from time to time;

(i) to ensure proper management and control of, and accounting for, public finances in order to promote efficient and effective use of the County's budgetary resources;

(j) to maintain 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) to monitor the County Government's entities to ensure that they comply with this Act and manage their funds effectively, efficiently and transparently and, in particular, properly account for the expenditure of those funds;

(l) to assist County Government entities in developing their capacity for efficient, effective and transparent financial management;

(m) to provide the National Treasury with such information as it may require to carry out its responsibilities under the Constitution and this Act;

(n) to issue circulars or instructions with respect to financial matters relating to the County Government;

(o) to take any other action to further the implementation of this Act in relation to the County.

Powers of a County  
Treasury

[15]

100. (1) A County Treasury has such powers as are necessary to enable it to carry out its responsibilities under this Act.

(2) Without limiting subsection (1), a County Treasury shall —

(a) with prior notice, investigate any system of

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public financial management used by any of the County Government entities and the internal controls used to monitor the system;

(b) take appropriate measures, including the withholding of funds, to deal with any failure by any County Government entity to comply with this Act;

(c) with prior notice, access the premises of a County Government entity and inspect all records and other documents kept by that entity that relate to the financial affairs of that County Government entity;

(d) require County Government entities to comply with all applicable norms or standards regarding accounting practices, budget classification systems and other public financial management systems;

(e) require any public officer employed by a County Government or County Government entity to provide explanations, information and assistance with respect to matters relating to the County Government's public finances;

(f) issue 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 to monitor compliance with those guidelines; and

(g) ensure that County Governments operate a financial management system that complies with national standards as prescribed by the Accounting Standards Board.

(3) 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.

(4) Any act done on behalf of a County Treasury by an authorised officer under an authorisation given under subsection (3) is taken to have been done by the County Treasury.

(5) 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. Failure to comply with such a request invalidates any subsequent action purporting to be taken under the authority of the authorisation.

(6) 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.

(7) A County Treasury may, in writing, revoke or vary an authorisation given under subsection (3).

(8) An explanation or information provided by a public officer in compliance with a requirement made under subsection (2) (e) is not admissible in evidence in a prosecution against the officer for an offence (not being the offence of failing to comply with a requirement made under subsection (2) (e)) if, at the time of providing the explanation or information, the officer objected to doing so on the ground that the explanation or information might incriminate the officer.

National Treasury  
support to County  
Treasury

101.(1) The National Treasury may, upon the request of the County Treasury, second to the County Treasury such number of officers as may be necessary for the County Treasury to better carry out its responsibilities under this Act.

(2) A public officer seconded to the 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.

County Treasury to observe fiscal responsibility principles.

[ 112]

102. (1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2).

(2) In managing the County Government's public finances, the County Treasury shall enforce the following fiscal responsibility principles:

(a) over the medium term, the County Government's recurrent expenditure must not exceed a percentage (as prescribed by regulation) of the County Government's total revenue;

(b) the County Government's expenditure on wages and benefits for its public officers must not exceed a percentage (as prescribed by regulation) of the County Government's total revenue;

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

(d) that the County public debt should be maintained at a sustainable level;

(e) that fiscal risks should be managed prudently; and

(f) that a reasonable degree of predictability with respect to the level of tax rates and tax bases should 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 will 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).

Circumstances in which a County Government may deviate from financial objectives.

[113]

103.(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 principles.

(3) The approval of the County Assembly for the variation and additional expenditures in subsection (1) or (2) shall be sought within two months.

(4) The County Treasury shall also provide a report to the County Assembly regarding the deviation and include in the report

—

(a) information on the reasons for the deviation;

(b) proposals to address the deviation; and

(c) the time estimated for doing so..

(5) The County Treasury shall publish and publicise the report within seven days after it has been submitted to the County Assembly.

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**Division 3—Responsibilities of County Treasury with respect to Public Funds**

Establishment of a  
County Revenue  
Fund for each  
County Government.

104. (1) In accordance with Article 207 of the Constitution, a County Revenue Fund is established for each County Government.

[110]

(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, because of a provision of this or another Act, excluded from payment into that Fund and is payable into another county public fund established for a specific purpose;

(b) may, in accordance with another written law, this Act or County legislation, be retained by the County Government entity that received it for the purposes of defraying its expenses; or

(c) that is reasonably excluded by an Act of Parliament as provided in Article 207 of the Constitution.

(3) The County Treasury is responsible for administering the County Revenue Fund and ensuring that the County Government complies with Article 207 of the Constitution.

(4) The County Treasury shall

(a) arrange for the County Revenue Fund to be kept in a bank account called 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 are paid from that account without undue delay.

(5) The County Treasury shall ensure that at no time is the

County Exchequer Account overdrawn.

(6) 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; or

(b) an Act of Parliament or County legislation that imposes a charge on that Fund,

the County Treasury shall obtain the written approval of the Controller of Budget.

(7) The approval of the Controller of Budget 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 unutilized 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. .

County Government  
Executive Committee  
may establish County  
Government  
Emergency Funds

105. (1) A County Executive Committee may, with the approval of the County Assembly, establish for the County Government an emergency fund under the name “.....County Emergency Fund”.

(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 arises for which there is no specific legislative authority.

What County  
Government  
Emergency funds  
consists of.

106. A County Government Emergency Fund consists of such money as is from time to time appropriated to that Fund by an appropriation law made by the County Assembly.

[117]

County Secretary to be responsible for County Government Emergency Fund

107. (1) The County Secretary is responsible for administering the County Government Emergency Fund for the County Government.

[118]

(2) The County Secretary shall establish and maintain a separate account into which all money appropriated to that Fund is to be paid.

Power of County Secretary to make payments from County Government Emergency Fund

108. (1) Subject to section 109, the County Secretary may, make advances from the County Government's Emergency Fund only if satisfied there is an urgent and unforeseen need for the expenditure for which there is no authority.

[119]

(2) For the purposes of subsection (1)—

(a) there is an urgent need for expenditure if in the opinion of the County Secretary it cannot be delayed until a later financial year without harming the general public interest of the County; and

(b) there is an unforeseen need for expenditure if it has not been provided for in an appropriation law made by the County Assembly for the current financial year.

Limitation on power of County Secretary to make payments from County Government Emergency funds

109. The County Secretary may not make a payment under section 108 if the payment, or the payment and other payments made from the County Government's Emergency Fund during a financial year would exceed two per cent of the total of the County Government's revenue as shown in that Government's audited financial statements for the previous financial year except for the first year.

[120]

County Secretary to seek County Assembly's approval

110. (1) Within two months after a payment from the County Government's Emergency Fund is made under

for payments made  
from County  
Government  
Emergency Fund.

[121]

section 106, the County Secretary shall seek the approval of the County Assembly for the payment.

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

(3) As soon as practicable after the County Assembly has approved the payment, the County Secretary shall arrange for a draft appropriation Bill to be introduced into 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.

(4) Any unutilized balances in the County Government Emergency Fund shall not lapse at the end of the financial year, but shall be retained for use for the purposes for which the fund was established.

Reporting  
responsibilities of  
County Treasury with  
respect to County  
Government's  
Emergency Fund.

[122]

111. (1) If an Emergency Fund has been established for a County Government in accordance with section 105, the County Treasury shall, within three months after the end of each financial year, prepare and submit to the Auditor-General financial statements for that year in respect of that Fund.

(2) The County Treasury shall include in those financial statements the following information concerning the County Government's Emergency Fund:

(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) if the person to whom the payment has been made has spent the money for that purpose, a statement 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) statement indicating how the payment conforms to section 106.

Power to establish other County public funds.

[111]

112. (1) In this section—

(a) “administrator”, in relation to a County public fund, means a person designated by the County Secretary under subsection (3) to administer the fund;

(b) “County public fund” means a public fund established under subsection (2).

(2) A County Government may establish a public fund with the approval of the County Secretary and the County Assembly.

(3) For every County public fund, the County Secretary shall designate a person to be responsible for administering the fund.

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

(5) The administrator of a County public fund shall ensure that money held in the fund (including any earnings or accruals

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referred to in subsection (4)) is spent only for the purposes for which the fund is established.

(6) The County Secretary may wind up a County public fund with the approval of the County Assembly.

(7) 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 Secretary shall, with the approval of the County Assembly, pay any deficit in the fund from the County Exchequer Account.

(8) The administrator of a County public fund shall—

(a) prepare accounts for the fund for each financial year; and

(b) within three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General.

(9) 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.

(10) The regulations may provide for the establishment, management, operation or winding-up of County public funds.

(11) This section does not apply to the County Revenue Fund established under section 104 of this Act.

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**Division 4—Responsibilities of County Government with respect to the County Budget Process**

County Treasury to  
prepare County  
Fiscal Strategy  
Paper.  
[130]

113.(1) The County Treasury shall prepare and submit to County Executive Committee the County Fiscal Strategy Paper for approval.

(2) The County Treasury shall submit the approved County Fiscal Strategy Paper in subsection (1) to the County Assembly, by the 28<sup>th</sup> February of each year.

(3) The County Treasury shall align its County Fiscal Strategy Paper with the national objectives in the Budget Policy Statement.

(4) 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.

(5) 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.

(6) In preparing the County Fiscal Strategy Paper, the County Treasury shall seek the views of —

- (a) the Commission on Revenue Allocation;
- (b) the public; and
- (c) any other interested persons or groups.

(7) Within fourteen days after submitting the County Fiscal Strategy Paper to the County Assembly, that Assembly shall consider it and may make recommendations with respect to the paper.

(8) The County Treasury shall consider any recommendations made by the County Assembly when finalising the budget for the financial year concerned.

(9) The County Treasury shall publish and publicise the County Fiscal Strategy Paper within seven days after it has been submitted to the County Assembly.

County Treasury to  
prepare a County  
Budget Review and  
Outlook Paper.

[131]

114.(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 30th September of that year.

(2) In preparing its county Budget Review and Outlook Paper, the County Treasury shall specify—

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

(b) 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

(c) reasons for any deviation from the fiscal responsibility principles or the financial objectives in the County Fiscal Strategy Paper, together with proposals to address the deviation and the time estimated for doing so.

(3) Within seven days after the County Budget Review and Outlook Paper is submitted to 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.

(4) 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.

#### **Division 5—Other responsibilities of County Treasury**

Banking  
arrangements for  
County Government  
entities.

[105]

115.(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 another written law.

(2) As soon as practicable, each County Treasury shall establish a Treasury Single Account at a bank through which payments of money to and by the various County Government entities are to be made.

(3) An accounting officer for a County Government entity shall not authorise a bank account of the entity to be overdrawn beyond the limit authorized by that entity.

(4) 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 written law.

(5) 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 Secretary may impose under section 151;

or

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

Management of cash  
at the County  
Government level.

[106]

116.(1) A County Treasury shall manage its cash within a framework established by the National Government for management of cash.

(2) Every County Government entity shall submit an annual cash plan to the County Treasury in a form and manner directed by that Treasury.

(3) The County Treasury may invest, for such periods and on such terms and conditions as may be prescribed within the scope prescribed by regulations, any money held in a County Government bank account.

(4) Except as otherwise provided by another written law, 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 those investments, and from the sale or conversion of securities relating to them.

(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 such costs, charges or expenses are payable from the County Exchequer Account.

Procurement of goods and services for County Government entities.  
Cap. 412C  
[132]

117. 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.

County Treasury to maintain record of County Government loans.  
[133]

118.(1) The County Treasury shall maintain a record of all loans made to the County Government and make the record available in a timely manner to the County Assembly on request.

(2) The County Treasury shall include in the record the following information with respect to every such loan:

(a) the principal of the loan and the terms and conditions applicable to 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, interest and other charges paid at any particular time;

(d) the balance of principal, interest and other charges outstanding at any particular time.

(3) With respect to loans obtained from outside Kenya or denominated in foreign currency, the County Secretary shall submit a quarterly report to the County Assembly on the transaction specifying the parties, the circumstances giving rise to the borrowing, the amount and the currency in which it is expressed, the

terms and conditions as to interest and repayment or payment and the aggregate of the principal sums borrowed under this Act up to the date of the report, and any further information which the County Secretary considers appropriate.

(4) The County Treasury shall maintain the following 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 in 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.

County Treasury to submit County Government debt management strategy to County Assembly.

[134]

119.(1) On or before 31<sup>st</sup> March 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 sources of loans made to the County Government;
- (b) the principal risks associated with those loans;

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

(d) 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 as required by this section, the County Secretary shall publicise the statement in such places and in such manner as will bring it to the attention of the public.

County Treasury to provide County Assembly with additional reports when required.

[34]

120. 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.

### **Division 6—County Government Budget Process**

Stages in County Government budget process.

[136]

121.(1) The budget process for County Governments in any financial year consists of the following stages—

(a) planning and establishing financial and economic priorities for the county over the medium term;

(b) making an overall estimation of the County Government's revenues and expenditures;

(c) preparing budget estimates for the County Government and submitting estimates to the County Assembly;

(d) approving of those estimates by the County Assembly;

(e) enacting an appropriation law and any other laws required to implement the County Government's budget;

- (f) implementing the County Government's budget;
- (g) accounting for, and evaluating, the County government's budgeted revenues and expenditures; and
- (h) auditing.

County Government  
to prepare  
development plan.

[137]

122.(1) In accordance with Article 220(2) of the Constitution, every County Government shall prepare a development plan 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 the regulations; and

(h) such other matters as may be required by the National Treasury.

(2) The County Treasury shall prepare the development plan in accordance with the format prescribed by regulations.

(3) The County Treasury shall, not later than the 1<sup>st</sup> September in each year, submit the development plan to the County Assembly for its approval, and send a copy of it to the National Treasury.

(4) The County Secretary shall publish and publicise the annual development plan within seven days after it has been submitted to the County Assembly.

County Government  
to prepare cash flow  
projection

123. (1) Not later than 15<sup>th</sup> June of each financial year, every County Government shall prepare an annual cash flow projection for their respective County for the next financial year, and—

(a) submit the cash flow projections to the Controller of Budget; and

(b) deliver a copy to the National Treasury.

(2) Regulations shall prescribe the format and content of the annual cash flow projections.

(3) Within fourteen days of receipt of the County Governments' cash flow projections in subsection (1), the Controller of Budget shall consolidate them and submit to the Cabinet Secretary for gazette.

(4) Within seven days of receipt of the consolidated County cash flow projections from the Controller of Budget in subsection

(3), the Cabinet Secretary shall gazette, publish and publicise them.

County Secretary to  
manage budget  
process at County  
Government level.

[138]

124.(1) The County Secretary shall manage the budget process for the County.

(2) Not later than 30<sup>th</sup> August in each year, the County Secretary shall issue a circular setting out guidelines on the budget process to be followed by all of the County Government's entities.

(3) The County Secretary 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) procedures 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; and

(f) 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).

County Secretary to  
submit budget  
estimates and other  
documents to County  
Executive  
Committee for its  
approval.

125.(1) A County Secretary shall submit to the County Executive Committee for its approval—

(a) the budget estimates and other documents supporting the budget of the County Government; and

(b) the draft Bills at county level required to implement

[139]

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 Secretary shall submit to the County Assembly the budget estimates, supporting documents, the Appropriation Bill and any other Bills required to implement the budget by 30<sup>th</sup> April in that year.

(3) The County Secretary 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.

(4) As soon as is practicable after the budget estimates and other documents have been submitted to the County Assembly as required by this section, the County Secretary shall publicize those documents.

County Secretary to  
submit budget  
documents to County  
Assembly.

[140]

126.(1) The County Secretary 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 significant 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;

(b) budget estimates that include—

(i) a list of all County Government entities that are

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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 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 to be by an Appropriation Act, together with the constitutional or national legislative authority for any such payments or liabilities; and

(d) a statement by the County Secretary 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) The regulations shall prescribe the nature of the information that is to be presented in the budget estimates and the form in which it is to be presented.

(3) In preparing the annual Appropriation Bill to put before the

County Assembly, the County Secretary shall ensure that the expenditure appropriations in the Bill are in a form that—

- (a) is accurate, precise and informative;
- (b) is sufficiently flexible to facilitate budget implementation;
- (c) clearly identify the County Government entities that, and the accounting officers who, will be responsible for administering those appropriations; and
- (d) clearly identifies the appropriations by Vote and programme.

County Assembly to consider budget estimates.

[141]

127.(1) The County Assembly shall consider the County Government's 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 30<sup>th</sup> 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 that County Assembly, and in finalizing these recommendations to that Assembly, the committee shall seek the views of the County Secretary on the proposed recommendations.

(3) An amendment to the budget estimates may be made only if it is in accordance with the policies outlined in the County Fiscal Strategy Paper County Assembly and if—

- (a) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriations; and
- (b) any proposed reduction in expenditures is used

to reduce the deficit.

(4) Within twenty-one days after the County Assembly has approved the budget estimates, the County Treasury shall—

- (a) consolidate them; and
- (b) then publish and publicise them.

(5) The County Secretary shall take all reasonably practicable steps to ensure that the approved budget estimates are prepared and published in a form that is reasonably intelligible to members of the public.

How delay in  
enacting County  
Appropriation Bill  
will be dealt with.

[142]

128.(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 for that year that have been submitted to the County Assembly.

(3) The money shall be included in the appropriation law under separate votes for the services for which it is withdrawn.

County Government  
to submit to County  
Assembly  
supplementary

129.(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

budget in certain  
circumstances  
[50]

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 must be sought within two months after the first withdrawal of the money.

(5) If the County Assembly is not sitting during time contemplated in subsection (4), or is sitting but adjourns before approval has been sought, approval must be sought within fourteen days after it next sits.

(6) When the County Assembly has approved spending under subsection (2), an 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 Assembly has, in special circumstances, approved a higher percentage.

Appropriation of  
money for County

130.(1) An appropriation that has not been spent at the end

Government purpose to lapse if unspent.

[123]

of the financial year for which it was appropriated lapses 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.

(3) This section is subject to any other provision of written law.

### **Division 7—Establishment of Forum for consultation by County Governments**

County Budget and Economic Forum to be established.

[135]

131.(1) As soon as practicable after the commencement of this Act, a County Government shall establish a body called the (*Name of the County*) County Budget and Economic Forum.

(2) 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.

(3) Each Forum is to comprise—

(a) the Governor of the County concerned who shall be the Chairperson;

(b) the other members of the County Executive Committee of that County; and

(c) a number of representatives, equal to the number of

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members of the Executive Committee, appointed by the Governor of the county from persons nominated by organisations that represent professionals, business, labour, community or faith-based groups at the county level.

(4) An appointed member holds office for two years and is eligible for re-nomination and re-appointment at the end of a term of office for another period not exceeding two years.

(5) The County Treasury shall act as the secretariat of the Forum.

(6) The Forum shall meet at least twice a year. The County Governor shall decide the time and agenda for the meetings of the Forum in consultation with the other members of the Forum.

(7) The Forum may determine its own rules and procedures in such manner as it considers appropriate.

(7) The Forum may invite other persons to attend any of its meetings and to participate in the proceedings.

(8) The chairperson shall convene meetings of the Forum to immediately precede the start of the budget process.

(9) The chairperson shall ensure that the decisions and recommendations of the Forum are publicised as soon as practicable after they are reached.

(10) In producing the County Budget Review and Outlook Paper or other documents relating to the budget preparation process, the County Secretary shall take into account such decisions and recommendations of the Forum as are relevant to the budget process.

Vacation of Office  
by a member

131. A member of the County Budget and Economic Forum

shall cease to be a member if, such person is a member by virtue of —

(a) section 131(3)(a)-(c), ceases to hold office by virtue of which he or she became member; or

(b) section 131(3)(d), the nominating organization—

(i) revokes the appointment;

(ii) the member resigns by writing to the chairperson; or

(iii) dies.

### **Division 8—Responsibilities of County Secretary and functions of County Governments with respect to public finance**

Stopping transfer of funds to County Government entities.

[124]

133.(1) The County Secretary is authorised to stop the transfer of funds to a County Government entity, but only for a serious material breach, or persistent material breaches, of this Act.

(2) The regulations may prescribe what constitutes a serious material breach, or persistent material breaches, of this Act for the purposes of this section.

(3) The County Secretary shall inform the Controller of Budget of a serious material breach, or persistent material breaches, committed by a County Government entity.

(4) As soon as practicable after being informed of such a breach or such breaches, the Controller of Budget shall prepare a report giving details of the breach or breaches and submit the report to the County Assembly.

Conditions in which County Governments

134.(1) In this section and 135, —

or County  
Government entities  
may receive grants  
and donations

[128]

(a) “grant” means an arrangement for the provision of financial assistance by a County Government—

(i) under which public money is paid to 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) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement,

but does not include—

(i) procurement of goods or services by a County Government entity;

(ii) payment of compensation or a benefit to which a person is entitled, including payment of an entitlement established by legislation or by a government program;

(iii) payment of a transfer by a County Government to an urban board;

(iv) an investment or loan; or

(v) any other payment specified by legislation or by regulations not to be a grant.

(b) “grant recipient” means an incorporated or unincorporated body not otherwise authorised to control or spend money under this Act;

(c) “intended beneficiaries” means the members of the public whom the projects or public services financed by a grant are intended to benefit;

(d) “third party” means a person other than a public officer.

(2) This section applies to the following:

(a) a County Government; or

(b) a County Government entity;

(3) A County Government or County Government entity may receive a grant or donation from a development partner only if the grant or donation has been previously approved by the County Secretary concerned and only as provided by this section.

(4) As soon as practicable after receiving the grant or donation, the recipient shall notify the County Secretary and the Cabinet Secretary of the receipt.

(5) If a project that is being financed by a grant or donation from a development partner requires County Government funding, the project may be started only when—

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

(b) the County Secretary has given a written authorisation for the project to begin.

(6) 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.

(7) The recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using its own administrative, accounting and auditing procedures, including 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.

(8) The County Secretary concerned may grant an exemption in writing from the requirements of subsection (5) if, in the opinion of that Secretary, it is in the public interest to do so.

Regulations on grant  
administration

**135** (1) The regulations 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 authorized to receive, control or pay public money as a grant

(e) measures to ensure that any third party that is authorized 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) The 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 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—

(a) receive, have custody of, or pay public money otherwise than in accordance with an authorization given in accordance with regulations made under subsection (2).

(4) A third party who contravenes subsection (4) 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.

Authority for borrowing by County Government.

136.(1) A County Secretary may, on behalf of the County Government, raise a loan for that Government's purposes, only if the loan and its terms and conditions are set out in writing and accord with—

(a) Article 212 of the Constitution;

(b) sections 56 and 137 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) Such a loan may be raised either within Kenya or elsewhere.

Obligations and restrictions with respect to County Government borrowing.

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

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(2) A County Government may borrow money only if it is authorised to do so by this Act or any other written law.

(3) A County Government may borrow money in accordance with section 56, 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 Secretary determines that all or part of the debt that would otherwise be a charge on that Fund should be a charge on another public fund established by that Government or any of its entities.

(5) The County Secretary 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 Secretary may determine.

(6) A County Secretary 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 Secretary considers necessary.

(7) A County Secretary 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 is a charge—

(a) on the County Revenue Fund; or

(b) on such other public fund established by the County Government or any of its entities as the County Secretary may determine.

Borrowing by  
County Government  
entities

[125]

138.(1) The County Assembly may authorise short term borrowing by County Government entities for cash management purposes only.

(2) Any such borrowing 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 in the same financial year as it is borrowed.

Persons who are  
authorised to execute  
loan documents at  
County Government  
level.

[109]

139.(1) The County Secretary and any person designated by the County Secretary in writing are authorised to execute loan documents for borrowing by the County Government.

(2) 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 a written law to execute such documents on behalf of the entity.

County Government  
may issue securities  
only if authorised by  
this Act.

[79]

140.(1) The County Government may issue securities (whether for money that it has borrowed or for any other purpose) only if it is expressly authorised to do so by this Act.

(2) The County Secretary, on behalf of the County Government, may issue securities for money borrowed by the

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County Government in accordance with criteria prescribed by regulations for the purpose of this subsection.

(3) Subject to the provisions of section 56 of this Act, the authority of the County Secretary to borrow money includes the authority to borrow money by issuing County Government securities.

(4) County Government securities—

(a) can be issued in one or more series; and

(b) may be issued in accordance with loan agreements entered into between the County Government and the Central Bank of Kenya and one or more or such other banks, financial institutions, or security dealers as the County Secretary may determine.

(5) Any such agreements may be amended from time to time.

(6) The County Secretary shall ensure that every County Government security issued under this section is given in the name of the County.

(7) A County Government security may be executed on behalf of the County Government only by—

(a) the County Secretary;

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

(c) a borrowing agent appointed for the purpose under this Act.

(8) For the purposes of subsection (7), it is enough if a facsimile of the signature of a person who is required to execute a County Government security under this section is reproduced on the security.

(9) The County Secretary may vary the terms and conditions of a County Government security, only with the consent of its holder.

(10) At the request of the holder of a County Government security, the County Secretary—

(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 another one.

(11) A person to whom an authorisation is given under subsection (10) shall comply with the authorisation.

(12) The County Secretary may authorise the issue of a new County Government security to replace a County Government security that is lost, damaged, or destroyed, but only if the County Secretary is satisfied that the loss, damage or destruction has occurred.

(13) Subject to this Act or any other written law, secondary trading of County Government securities may be carried out only—

(a) in such manner as may be prescribed by regulations made for the purposes of this subsection;

(b) and in accordance with the provisions of section 120 of this Act.

In this subsection, “secondary trading” means any activity leading to a change in the ownership of a County Government security before its redemption date.

(14) Irrespective of anything in this section to the contrary, government securities may be issued and exist in electronic form as

a debt entry.

(15) 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 Secretary 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.

(16) 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 Secretary shall return the uncollected amount to the County Exchequer Account to form part of the County Revenue Fund.

County Government  
authorised to lend  
money.

[126]

141.(1) A County Government is authorised to lend money but only in accordance with terms and conditions prescribed by the regulations.

(2) A County Government entity may lend money only if authorised to do so by an Act.

(3) Even if an Act authorises a County Government entity to lend money, it may do so only in accordance with such regulations (if any) as are prescribed for the purpose of this subsection.

(4) The County Secretary may, in relation to any money lent by the County Government under this section—

(a) accept all money payable under the loan in any currency that the County Secretary considers appropriate; and

(b) agree at any time to the variation of any security given in respect of the loan.

(5) 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.

(6) The County Secretary shall ensure that a security given in respect of a loan under this section is given in the name of the County Government.

(7) The County Secretary 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 Government.

County Government  
joint infrastructure  
investment

[127]

142. Regulations may prescribe financial relations with respect to joint infrastructure investments undertaken by counties.

### **Division 9—Responsibilities of County Government Entities and their Accounting Officers**

County Secretary to  
designate accounting  
officers for County  
Government entities

143.(1) Every County Secretary shall, in writing, designate persons (called accounting officers) to be responsible for managing the finances of such County Government entities as specified in the designation.

(2) A County Secretary shall ensure that each County Government entity has an accounting officer designated for it in accordance with Article 226 of the Constitution.

Responsibilities of  
accounting officers  
designated for  
County Government  
entities.

144.(1) An accounting officer designated under section 143 is responsible 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—

[145]

(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 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) 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), the accounting officer shall bring the matter to the attention of the County Executive Committee member responsible for the entity.

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

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the County Government;

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

(i) if the entity is not a County corporation, submit the estimates of the entity to the County Secretary;

(j) if the entity is a County corporation, submit the estimates to the person responsible for the state corporation and to the County Secretary;

(k) within 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 their respective County Government entity shall have adequate systems and processes in place to plan for assets, procure assets, account for assets, maintain assets, store idle assets and dispose of assets, including an asset register that is current, accurate and available for inspection at any time by the National Treasury, the relevant County Treasury or the Auditor-General.

(p) provide the County Treasury with any information it

may require to fulfil its functions under this Act.

(q) carry out such other responsibilities as may be specified by the County Secretary.

(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.

(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.

Power of accounting officer for a County Government entity to write-off losses.

[137]

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

(2) An accounting officer for a County Government entity may, with the approval of the County Secretary, 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.

(3) The County Secretary may, with the approval of the County Executive Committee, authorise an accounting officer to

write off a loss exceeding the further amount referred to in subsection (2).

(4) The 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

Spending authority  
of accounting officer.

[82]

146.(1) If a County Government entity has a direct charge on the County Revenue Fund under the Constitution, an Act of Parliament or County legislation, the accounting officer who has responsibility for that entity has the authority to spend money under a direct charge in accordance with purposes specified in law.

(2) An appropriation is not required for the spending of money under subsection (1).

Power of accounting  
officers for County  
Government entities  
to make cash  
advances.

[146]

147.(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 such a cash advance has been made shall account for the use of the advance.

(4) A public officer to whom a cash advance has been made under subsection (1) shall return the cash advance 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 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.

Accounting officer to be responsible for managing assets and liabilities of County Government entity.

[84]

148.(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 Government achieves value for money in acquiring, using and disposing of those assets.

(2) The accounting officer for a County Government entity may dispose of assets at the most cost effective and competitive price and ensure that the proceeds from all asset disposals are credited into a bank account of the entity.

Limited power of  
accounting officer to  
reallocate  
appropriated funds.

[148]

149.(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) The regulations may prescribe requirements for the reallocation of funds within Sub-votes or programs.

County Government  
entity to maintain  
internal auditing  
arrangements.

[129]

150. (1) A County Government entity shall ensure that—

- (a) it has appropriate arrangements for internal audit; and
- (b) if any regulations are in force under subsection (2), those regulations are complied with.

(2) The regulations may prescribe requirements to be complied with in conducting any such audits.

(3) The arrangements for the conduct of internal audits 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 such as are prescribed by the regulations.

Public officers and

151.(1) If an accounting officer reasonably believes that

accounting officers  
engaging in improper  
conduct liable to be  
disciplined.

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-

[149]

(a) take appropriate measures to discipline the  
public officer in accordance with laid down procedures; or

(b) refer the matter to an appropriate disciplinary  
body.

(2) If the County Secretary reasonably believes that an  
accounting officer has engaged in improper conduct within the  
meaning of subsection (4), the County Secretary shall—

(a) take appropriate measures to address the matter  
in accordance with laid down procedures; or

(b) refer the matter to an appropriate disciplinary  
body.

(3) The measures referred to in subsection (2)(a) include  
the County Secretary revoking the accounting officer's designation  
as such.

(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 under it;

(b) undermines any financial management  
procedures or controls; or

(c) makes or permits an expenditure that is unlawful or  
has not been properly authorised by the entity concerned.

(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.

**Division 10—Receivers and collectors of County Government revenue**

Receivers of County Government revenue.

[19]

152.(1) The County Secretary shall, in writing, designate persons to be responsible for collecting, receiving and accounting for such County Government revenue as the County Secretary may specify in their letters of designation.

(2) A receiver of County Government revenue is responsible to the County Secretary for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for.

Receiver may authorise public officer to be collector of revenue.

[20]

153.(1) A receiver of revenue for a County Government may authorise any public officer employed by that Government or any of its entities to be a collector of revenue for the purpose of collecting revenue for that 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, within three days after receiving it, deliver the revenue to a receiver or collector of revenue for that Government.

Limitation of powers

154.(1) The County Secretary may authorise the

of Kenya Revenue Authority.

Cap. 469.

[21]

Kenya Revenue Authority to be a collector of County Government revenue for the purposes of this Part.

(2) The Kenya Revenue Authority may not withdraw any funds from a County Revenue Fund, except as authorised by an Act of Parliament or County legislation.

(3) The Kenya Revenue Authority shall keep a full record of all amounts as may be authorized by an Act of Parliament, including the names of the persons to whom the amounts were refunded, the dates of, and the reasons for, the refunds.

County Government to ensure that its revenue raising measures conform to Article 209(5) of the Constitution.

[67]

155.(1) 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 before imposing any tax or revenue raising measures under this Article, shall request and consider the recommendations of the Cabinet Secretary and the Commission on Revenue Allocation.

(2) A tax or other revenue raising measure imposed by a County Government that does not comply with subsection (1) is invalid.

### **Division 11—Obligations of County Public Officers**

Obligations of public officers with respect to County Government resources

156.(1) Every public officer employed in or by the County Government shall comply with Article 232 of the Constitution when carrying out a responsibility imposed, or exercising a power conferred, by this Act.

(2) Every such public officer shall also—

(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 that—

(i) is lawful and authorised; and

(ii) effective, efficient, economical and transparent;

(c) within the officer's area of responsibility—

(i) ensure that adequate arrangements are made for the 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.

### **Division 12—Financial reporting by County Government entities**

County Government to prepare annual financial statement.

[154]

157.(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 of 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 157, and
    - (ii) the statements prepared by receivers of revenue under section 159;
  - (c) a statement of payments (if any) made out of the County Exchequer Account that are authorised by a written law other than an Appropriation Act;
  - (d) a statement of the total amount of debt of 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; and
  - (f) such other statements as the County Assembly may require.

(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) Within 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 Controller of Budget and the Commission on Revenue Allocation.

(5) The County Secretary shall also deliver a copy of the

financial statements and summaries to the National Treasury.

Annual reporting by  
accounting officers.

[155]

158.(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 spent was voted;

(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) the recurrent Vote;

- (ii) the development Vote; and
- (iii) 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 such 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 the 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, the National Treasury, and the Commission on Revenue Allocation.

(5) In the case of an entity that is a County corporation, the accounting officer shall also submit a copy of the County corporation's financial statements to the County Secretary responsible for that corporation.

Annual reporting by receivers of revenue.

[156]

159.(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) Such an account shall include—
- (a) a statement of receipts and disbursement in such form as the National Treasury may direct; and
  - (b) a statement of arrears of revenue.
- (3) Within 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 County Treasury, the National Treasury and the Commission on Revenue Allocation.
- (4) Within three 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 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; and
  - (d) the reasons for waiver or variation.

Accounting officer to prepare quarterly reports for County Government entity.

160.(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.

[157]

(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) Within fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the County Treasury.

(4) Within 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, Commission on Revenue Allocation and the National Treasury; 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 person responsible for the corporation.

Administrators  
of county  
public funds to  
prepare annual  
financial

161. The administrator of a county public fund established by an Act of Parliament shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

statements.

[94]

Annual reporting by Administrators of county public funds.

162. Within three months after the end of each financial year, the administrator of a County public fund established by an Act of Parliament shall —

(a) submit the financial statements in section 161 to the Auditor General; and

[95]

(b) deliver a copy to the County Treasury, Controller of Budget and the Commission on Revenue Allocation.

**Division 13— Financial Management in Urban areas and Cities**

Application of this part of the Act

163.(1) This part of this Act applies to urban areas and cities as defined under 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.

Accounting Officer of an urban area or city

164. The accounting officer for an urban area or city shall be designated as provided in Section 143 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 management and financial administration of the urban area or city.

Urban area or city  
accounting officer  
responsibilities in  
revenue management

165. (1) The accounting officer of an urban area or city is responsible for the management of the revenue of that urban area or city.

(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 Secretary of any payments due by an organ of state to the urban area or city in respect of city or urban area tax, or for city or urban area services, if such payments are regularly in arrears for periods of more than 30 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.

Financing of urban  
areas or cities

166. Subject to the Constitution and any other Act of Parliament, 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 collected which will be 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 171 of this Act.

Criteria for allocating funds to Urban Areas or Cities by County Government

167. (1) In allocating funds to the urban areas or cities under section 166 (b), the County Government shall use objective criteria reflecting the service demand and responsibilities of an 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 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 and the National Treasury.

Principles to be observed by urban areas or cities in managing public finances

168. 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, including elected officials must not exceed a percentage (to be prescribed by the County Assembly) of their revenue;
- (b) over the medium term, the urban area's or cities' recurrent expenditure must not exceed a percentage (to be prescribed by the County Assembly) of their revenue;
- (c) over the medium term, the proceeds of borrowing by urban areas or cities are used only for purposes of financing development expenditure and not recurrent expenditure; and
- (d) urban areas or city's debts are maintained at a sustainable level.

Budget and budget process for urban areas or cities

169. (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 30<sup>th</sup> August of every year, the County Treasury shall issue budget instructions to the urban area or city.

(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 subsection (3) and (4) prepare and submit budget requests to the County Treasury upon approval by the Board in the case of cities and municipalities, and by the Town Committee in the case of towns.

(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 cities.

(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 or Town Committee.

(9) In preparing the strategic plan in subsection (1) and the annual budget estimates in subsection (5), the Boards and Town Committees of urban areas or cities:-

(a) shall ensure that the public are 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) No later than the 28<sup>th</sup> February of every year, each urban area or city shall submit its annual budget estimates to its relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill.

(11) 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.

Response to delays in approval of annual budgets by urban areas or cities

170. (1) If the annual budget of an urban area or city for a financial year has not been approved, or is not likely to be approved, by the beginning of the financial year, the relevant County Assembly may authorise the withdrawal of funds from the bank account of the 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 approved budget for the previous financial year as the basis for apportioning funds across services;

(b) may be used until such a time as the subsequent annual budget is approved by the Board or Town Committee of the

urban area or city and thereafter by the relevant County Assembly;  
and

(c) may not exceed in total one-half of the amount included in the estimates of expenditure for the approved budget for the previous financial year.

Borrowing by urban areas or cities

171. (1) An urban area or city may borrow only —

- (a) from the County Government;
- (b) through its County Government; and
- (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 Secretary may impose, and in the case of subsection (b), in accordance with the provisions of section 56 of this Act.

Conditions in which Urban Area or Cities may receive grants and donations

172. (1) An urban area or city may receive a grant or donation from a development partner only if the grant or donation has been previously approved by the County Secretary concerned, and only as provided under section 134.

(2) As soon as practicable after receiving the grant or donation, the recipient shall notify the County Secretary and Cabinet Secretary of the receipt.

(3) If a project that is being financed by a grant or donation from a development partner requires County Government funding, the project may be started only when—

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

(b) the County Secretary has given a written authorisation for the project to begin.

(4) 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.

(5) The recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using its own administrative, accounting and auditing procedures, including 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.

(6) The County Secretary concerned may grant an exemption in writing from the requirements of subsection (5) if, in the opinion of that Secretary, it is in the public interest to do so.

Urban Areas or  
Cities bank accounts

173. (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 Secretary.

(2) All money received by an urban area or city must be paid into its bank account or accounts, and this must be done promptly and in accordance with this Act and any requirements that may be prescribed.

Reporting by urban  
areas or cities

174. (1) The Board or the Town Committee 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.

Transitional  
arrangement

175. All directions, resolutions, orders and authorizations on financial management given or issued by local authorities established under the Local Government Act 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 2011 and this Act as the case may be, until the expiry, amendment or repeal of these Acts.

#### **Division 14—Miscellaneous matter**

County Assembly  
may extend time  
limits.

176. A County Assembly may, by resolution, extend any time limit in this Part for submitting a statement or other document required to be submitted to it under this Part.

#### **Division 15—Additional requirements for County Corporations and County Government-linked Corporations**

Definitions for  
purpose of Division  
15.  
[86]

177. For the purposes of this Division—

(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;

(b) “invest” means any form of funding, or potential funding, provided to a County corporation, including providing share capital, loans, grants or subsidies.

Establishment and  
dissolution of  
County corporations.

178. (1) A County corporation may be established or dissolved only with the prior approval of the County Executive

[86]

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.

Restrictions on  
County Government  
investing in County  
government-linked  
corporations.

[86A].

**179.** (1) The County Government may not invest-

(a) in a County corporation if the investment would result in the County corporation becoming a County Government-linked 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.

County Treasury  
responsible for  
monitoring financial  
performance of  
County corporations.

[87]

**180.** (1) The County Treasury is responsible for monitoring—

(a) the financial performance of County corporations; and

(b) the performance by those County corporations of any functions or activities that affect their financial performance.

(2) In particular, the responsibilities of the County Treasury under subsection (1) include—

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(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 Secretary on the performance of those County corporations; and

(c) making recommendations to the County

Secretary as to how a particular County corporation could improve its performance.

Annual reporting by  
the County Treasury  
on County  
corporations[88]

**181.** (1) Within six 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 during the financial year;

(e) the amount of any loans made by the County Government to the County corporation, during the financial year;

(f) the cumulative amount of undischarged loans and in respect of the corporation;

(g) the amount of the 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 amount of 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.

(j) an assessment of the financial and related non-financial performance of the County corporation for the financial year;

(k) a cost-benefit analysis of the County Government's continued involvement or investment in, or funding of, the County corporation.

(3) The County Treasury shall submit a copy of the report to the Controller of Budget, the Commission on Revenue Allocation, Auditor-General with a copy to the National Treasury.

## PART V—RELATIONS BETWEEN NATIONAL AND COUNTY GOVERNMENTS ON BUDGET AND ECONOMIC MATTERS

### Division 1—Establishment of the Budget and Economic Council

Establishment,  
purpose and  
composition of the  
Budget and  
Economic Council.

182. (1) A body called the Budget and Economic Council is established by this section.

(2) The purpose of the Council is to provide a means for consultation between the National Government and the County Governments on—

(a) the contents of the Budget Policy Statement the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy; and

(b) matters relating to budgeting, the economy and financial management at the national and county level including

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borrowing and National Government loan guarantees

(c ) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;

(d) any proposed regulations to this Act;

(e) recommendations of the Commission on Revenue Allocation on the equitable distribution of revenue between the National and County Government and amongst the County Governments as provided in section 184; and

(f) any other matter the Cabinet Secretary in consultation with other Council members may decide.

(3) The Council comprises—

(a) the Cabinet Secretary who shall be the Chairperson;

(b) The Cabinet Secretary responsible for Devolved Government who shall be the Vice-Chairperson;

(c) the Chairperson of the Parliamentary Service Commission or a representative designated by that officer;

(d) the Chief Justice of the Judicial Service Commission or a representative designated by that Chief Justice;

(e) the Chairperson of the Commission on Revenue Allocation designated by the Chairperson;

(f) The Chairperson of the Council of County Governors

(g) every County Secretary; and

(h) two representatives appointed by the Cabinet Secretary from persons nominated by organisations representing professional, business or labour organisations at the national level.

(4) 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.

(5) The National Treasury shall act as the secretariat of the Council.

(6) The Council shall meet at least twice a year. The Cabinet Secretary shall decide the time and agenda for meetings of the Council in consultation with the other members of the Council.

(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.

Vacation of Office  
by a member.

183. A member of the Budget and Economic Council shall cease to be a member if, such a person is a member by virtue of-

(a) section 182(3)(a)-(h), ceases to hold office by virtue of which he or she became a member to the Council; or

(b) section 182(3)(i), the nominating organization—

(i) revokes his or her appointment;

(iii) the member resigns by writing to the chairperson; or

(iii) dies.

### **Division 2-Process of Sharing Revenue**

The process of  
sharing revenue

184. The process of sharing of 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.

Recommendations of the Commission on Revenue Allocation

185. (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) If the Cabinet Secretary and the Commission agree on a later date for the submission of the Commission's recommendations in terms of subsection (1), that date may not be later than 20<sup>th</sup> February before the introduction of the Division of Revenue Bill in Parliament for the relevant financial year.

(3) When making its recommendations, the Commission must take into account the criteria listed in Article 203(1) of the Constitution and the recommendations of the Budget and Economic Council in section 182(1)(e)

Division of Revenue Bill and County Allocation of Revenue Bill

186. (1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to the Parliament a Division of Revenue Bill and County Allocation of Revenue Bill 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); and

(b) any other allocations to the counties, from the National Government's share of that revenue, and any conditions on which those allocations shall be made.

(4) Before the submission of the Division of Revenue Bill and County Allocation of Revenue Bill, the Cabinet Secretary shall consult -

(a) the Budget and Economic Council; and

(b) the Commission on Revenue Allocation.

(5) When the Division of Revenue Bill or County Allocation of Revenue Bill is submitted, it must 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; and

(c) any assumptions and formulae used in arriving at the respective shares mentioned in subsections (2) and (3).

## **PART VI—ACCOUNTING STANDARDS BOARD**

Establishment of the 187. There is established an Accounting Standards Board, which

- 
- Board shall be an administrative agency of the National Treasury.
- Composition of the Board.
188. (1) The Accounting Standards Board shall consist of no more than 10 members as the Cabinet Secretary may determine.
- (2) In making appointments to the Board, the Cabinet Secretary shall consult the Auditor-General.
- (3) The Board may establish and regulate its own procedure.
- Functions of the Board
189. (1) The Accounting Standards Board shall perform the following functions—
- (a) set standards of generally accepted accounting practice for the annual financial statements of —
    - (i) State Departments;
    - (ii) National Government entities;
    - (iii) County Government entities;
    - (iv) Commissions and Independent Offices;
    - (v) Urban areas and cities;
    - (vi) State Corporations;
    - (vii) County Corporations;
    - (viii) National Government and County Government funds;
    - (ix) Parliament;
    - (x) Judiciary; and
    - (xi) County Governments.
  - (b) prepare and publish directives and guidelines concerning the standards set out in terms of paragraph (a);
  - (c) make recommendations to the Cabinet Secretary on the effective dates of implementation of these standards,

for the different categories of institutions to which these standards apply; and

(d) perform any other responsibilities incidental to advancing financial 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 domestic and 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.

(4) The standards set by the Board shall promote transparency in effective management of revenue, expenditure, assets and liabilities of the institutions to which these standards apply.

Terms and  
Conditions of  
Service

190. The qualifications, remuneration, term of office, removal of members, filling of vacancies, terms and conditions of services, finances and administration of the Board shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Public Participation  
in developing  
standards

191. The Accounting Standards Board shall ensure that before any directives and guidelines on accounting standards are published by the Cabinet Secretary, there shall have been sufficient public participation in the process of their development.

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**PART VII — ENFORCEMENT PROVISIONS**

Offences by public  
officers  
[88A].

192. (1) A public officer shall not spend public money otherwise than as 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 any 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) If a National Government entity or a County Government entity—

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(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,

any 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.

Offence of financial misconduct.

[89]

193. (1) 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) borrows money on behalf of that Government or entity, or repays or converts existing loans;

(b) issues public government securities, or vary their terms and conditions;

(c) opens a bank account in the name of the Government;

(d) lends money on behalf of the Government;

(e) issues guarantees or indemnities on behalf of the Government;

(f) issues securities for loans made to the Government;

(g) disposes of property belonging to, or under the control of, that Government or entity;

(h) fails to pay into a Government bank account any public money entrusted to the officer or received by the officer

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for or on behalf of that Government or that entity;

(i) incurs expenditure or makes a commitment on behalf of that Government or entity;

(j) incurs wasteful expenditure on behalf of that Government or entity;

(k) 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;

(l) 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;

(m) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;

(n) intentionally or recklessly obstructs or hinders a person while the person is acting in the performance or exercise of the person's functions or powers under this Act;

(o) 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;

(p) does an act for the purpose of procuring for the public officer or any other person or organisation—

(i) the improper payment of public money belonging to or entrusted to that Government or entity; or

(ii) the improper use of any public property of that

Government or entity; or

(q) fails to remit revenue received contrary to the provisions of s.75(2) of this Act.

(2) A public officer employed by a County Government or County Government entity commits an offence of financial misconduct if, without lawful authority, the officer—

(a) borrows money on behalf of that Government entity, or repays or converts existing loans;

(b) opens a bank account in the name of that Government or entity;

(c) lends money on behalf of that Government or entity;

(d) purports to issue guarantees or indemnities on behalf of the Government;

(e) issues securities for loans made to the Government;

(f) disposes of property or assets of that Government or entity;

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(g) fails to pay into a bank account of that Government or entity any public money entrusted to the officer or received by the officer for or on behalf of that Government or entity;

(h) incurs expenditure or make 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;

(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 a that Government or entity or in relation to the management or control of a County Government asset or liability when required to do so, except where such refusal or failure is required or authorised by any 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 the 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; or

(o) does an act for the purpose of procuring for the public officer or any other person or organisation—

(i) the improper payment of public money belonging to or entrusted to that Government or entity; or

(ii) the improper use of any public property of that Government or entity. or

(p) fails to remit revenue received contrary to the provisions of section 153(2) of this Act.

Other offences by  
public officers.

[91]

194. (1) A public officer commits an offence if the 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.

Penalties for offences.

[92]

195. Except as otherwise provided by this Act, a person who is found guilty of having committed an offence under this Act is liable on conviction to a term of imprisonment not exceeding 5 years or to a fine not exceeding ten million shillings, or to both.

Duty of Principal Secretary to report suspected offences to relevant law enforcement authority for investigation.

[93]

196. (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 discovered, 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 Secretary is liable to disciplinary action in accordance with—

(a) the terms and conditions of that Secretary’s appointment or employment; and

(b) any provisions prescribed by regulations for the purposes of this section.

Duty of County the County Principal Secretary to report suspected offences to relevant law enforcement authority for

197. (1) If the County Principal Secretary suspects that an offence may have been committed under this Act, that County 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

investigations.

[93]

offence is discovered, to prosecute any person who is alleged to have committed it.

(2) If the County Principal Secretary fails to report a suspected offence as required by subsection (2), that County Principal Secretary is liable to disciplinary action in accordance with—

(a) the terms and conditions of that Secretary's appointment or employment; and

(b) any provisions prescribed by regulations for the purposes of this section.

Liability of public officer for certain losses sustained by National Government.

[94]

198. (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 192, 193 and 194.

(2) The National Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from such a public officer for any loss for which the officer is liable under subsection (1).

Liability of public officer for certain losses sustained by County Government.

[94]

199. (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 section 192,

193 and 194.

(2) The County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from such a public officer for any loss for which the officer is liable under subsection (1).

Cabinet Secretary  
may impose  
institutional  
sanctions on National  
Government entities.  
[95]

200. (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 192.

(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.

(3) If a County Government incurs debt in excess of an ability to service such debt or in contravention of the debt level approved by the National Government, the National Treasury may require the County Government to adhere to a program of debt reduction determined by the National Treasury.

County Secretary  
may impose  
institutional  
sanctions on County  
Government entities.

[95A]

201. (1) A County Secretary may apply sanctions to a County Government entity that—

(a) provides inaccurate information to public officers regarding financial matters;

(b) creates liabilities in excess of its ability to finance those liabilities;

(c) fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General; or

(d) contravenes section 192.

(2) The County Secretary may apply any of following

sanctions to a County 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 entity's ability to reallocate funds;
- (c) withhold from the entity funds to which the entity would otherwise be entitled under the Constitution or this Act;
- (d) treat the entity's accumulated liabilities as a charge on the entity's future revenues;
- (e) 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**

Power of Cabinet Secretary to make regulations for purposes of this Act.  
[97]

202. (1) The Cabinet Secretary may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In making regulations under this Act, the Cabinet Secretary shall consult the 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 from time to time; or

(d) may do any combination of those things

(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.

[97]

Protection of certain public officers from personal liability.

[s. 20 of Ethics and Anti-Corruption Act 2011]

203. (1) Nothing done by any authorized 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, render such a person or public officer personally liable for any action, claim or demand.

Repeal of certain Acts.

Cap. 425.

Cap. 412.

Cap. 422.

No. 5 of 2009

Cap. 412B

204. The following Acts are repealed—

- (a) the Civil Contingencies Act;
- (b) the Exchequer and Audit Act;
- (c) the External Loans and Credit Act;
- (d) the Fiscal Management Act;
- (e) the Government Financial Management Act;

- Cap. 461. (f) the Guarantee (Loans) Act;
- Cap. 420. (g) the Internal Loans Act;
- [98] (h) the Contingencies Fund and County Emergency Funds Act; 2011; and
- (i) the National Government Loans Guarantee Act 2011.

Prerequisite to introduction of Bill into Parliament to amend this Act.

205. A Bill to amend this Act may be introduced into Parliament only if there is annexed to it or appears on its face a certificate signed by the Cabinet Secretary certifying that the Commission on Revenue Allocation and (if it is in existence at the relevant time) the Commission on the Implementation of the Constitution have been consulted on the proposed Bill and have been given an opportunity to make comments on its contents.

Consequential amendments to other Acts.

206. The Acts specified in the First Schedule are amended in the manner specified in that Schedule.

[99]

Savings and transitional provisions.

207. The savings and transitional provisions specified in the Second Schedule have effect.

[100]

**FIRST SCHEDULE**

(S. 203)

**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

Amendment of  
Cap. 2.

1. Section 3 of the Interpretation and General Provisions Act is amended as follows:

(a) by deleting the definition “accounting officer” and replacing it with the following:

“ “accounting officer” has the meaning given by section 3(1) of the Public Financial Management Act, 2011;”;

(b) in the definition “Consolidated Fund”, by deleting “of Kenya”;

(c) by deleting the definition “the Constitution” and replacing it with the following:

“ “Constitution” means the Constitution of Kenya, 2010 adopted and enacted by the people of Kenya and published in the Gazette on 27<sup>th</sup> August 2010;”;

(d) by deleting the definition “receiver of revenue” and replacing it with the following—

“receiver of revenue”—

(i) in relation to National Government revenue, means a receiver of national revenue designated under section 74 of the Public Financial Management Act, 2011; and

(ii) in relation to County Government revenue, means a receiver of county revenue designated under section 152 of that Act;”;

(e) by deleting the definition “Treasury” and replacing it with the following, in the appropriate alphabetical order—

“ “National Treasury” means the National Treasury established by section 10 of the Public Financial Management Act, 2011;”;

(f) in the definition “written law”—

(i) by deleting “or” at the end of paragraph (b);

(ii) by inserting “or” at the end of paragraph (c), and

(iii) by inserting the following after paragraph (c)—

“(d) any county legislation as defined in Article 260 of the Constitution;”.

Amendment of  
Cap. 101.

2. The Permanent Secretary to the Treasury (Incorporation) Act is amended by deleting “Permanent Secretary” wherever occurring and substituting it with “Cabinet Secretary”.

Urban Areas  
and Cities Act,  
2011

3. Section 20(l) of the Urban Areas and Cities Act 2011 is deleted and replaced by inserting the following—

“prepare and submit its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill”.

The  
Contingencies  
Fund and  
County  
Emergency

4. The Contingencies Fund and County Emergency Funds Act, 2011 is amended as follows:

(a) in section 6(1)—

Funds Act  
2011

(i) striking out the words “with the approval of the Cabinet” in between the words “may” and “make” and

(ii) deleting the word “payments” and substitute it with the word “advances”

(b) in section 8, adding a subsection (4) to read—

“Any unutilized balances in the Contingencies Fund shall not lapse at the end of the financial year but shall be retained for use for the purposes for which the fund was established”.

(c) in section 12, inserting the words “County” in between the words “from” and “emergency” in the margin notes.

(d) in section 13(1) —

(i) striking out the words “with the approval of the County Executive Committee” in between the words “may” and “make” and

(ii) deleting the word “payments” and substituting it with “advances”

(iii) delete the word “contingencies” and insert the words “County Government Emergency” in the margin note

(e) in sections 14 delete the word “Contingencies” and insert the words “County Government Emergency” in the margin note.

(f) In section 15, insert the words “County Government” just before the words “Emergency Fund” in the margin note.

(g) in section 15, adding a subsection (4) to read,

“Any unutilized balances in the County Emergency Fund shall not lapse at the end of the financial year but shall be retained for use for the purposes for which the fund was established”

**SECOND SCHEDULE**

(S. 206)

**SAVINGS AND TRANSITIONAL PROVISIONS**

Deployment of  
staff to County  
Government

1. 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,

Secondment of  
staff.

2. On the commencement of this Act, and in line with Articles 189,190 and 262(15) of the Constitution, the National Treasury shall, upon request of a County Government, second such staff to the County Government as may be necessary to support the County Government in—

- (a) carrying out its responsibilities under this Act; and
- (b) performing its functions under the Constitution relating to matters of public finance.

Abolition of  
Treasury.

3. (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.

Principal  
Secretary to the  
National  
Treasury.

- 4. (1) On the commencement of this Act—
  - (a) the office of Permanent Secretary to the Treasury is abolished; and
  - (b) subject to this Act, the person who held that position immediately before that commencement becomes the Principal Secretary to the National Treasury on the same terms and conditions as were applicable to that person immediately before that commencement.
- (2) Any reference to the Permanent Secretary to the Treasury in a written law is to be read as a reference to the Principal Secretary to the National Treasury.

Accounting  
officers.  
Cap. 412B.

- 5. A person holding office as an accounting officer appointed under the Government Financial Management Act, 2004 shall continue in office until the Cabinet Secretary designates otherwise.

Receivers of  
revenue.

Cap. 412B

6. A person holding office as a receiver of revenue under the Government Financial Management Act 2004 continues in office until the Cabinet Secretary designates otherwise.

Contingencies  
Fund.

Cap. 425.

7. (1) On the commencement of this Act—
- (a) the Civil Contingencies Fund in operation under the Civil Contingencies Fund Act 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.

Guarantee  
limit.

Cap. 461

8. Despite the repeal by this Act of the Guarantee (Loans) Act, the limit of contingent liability established by resolution of the National Assembly on 8<sup>th</sup> July 1993 under that Act continues in effect, until such time as the National Assembly sets a financial limit under section 49(2) of this Act.

Existing public  
funds.

9. 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.

Existing  
regulations

10. Any regulations, directions or instructions that were made or issued

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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.

Power to make savings and transitional regulations.

11. (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 date 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.

Timeline for implementation of program budget

12. (1) The implementation of programme budgets shall commence in 2013/14 for the National Government and in the 2014/15 financial year for the County Governments constituted under Chapter eleven of the Constitution.

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**MEMORANDUM OF OBJECTS AND REASONS**

To be completed

Dated the..... 2011.

UHURU KENYATTA

Deputy Prime Minister and Minister for Finance