

THE COUNTY GOVERNMENTS FINANCIAL MANAGEMENT BILL, 2011

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established under the Intergovernmental Fiscal Relations Act;

“board of directors”, in relation to a county public entity has the meaning assigned to it in the Urban Areas and Cities Act;

“budget forum” means the budget forums contemplated in section 46 of this Act;

“budget-related policy” means a policy of a county affecting or affected by the annual budget of the county, including-

- (a) the taxation policy which the county may adopt in terms of this Act;
- (b) the rates policy which the county governments and cities and municipalities may adopt in terms of the applicable legislation;
- (c) the credit control and debt collection policy which the county governments, cities and urban areas and county public entities may adopt in terms of this Act;

“county government” subject to Article 176(1) of the Constitution where the context so admits, includes sub units, cities and urban areas and county public entities;

“category” in relation to cities and urban areas, means urban area or cities referred to in the Urban Areas and Cities Act;

“creditor”, means a person to whom money is owed by either an county government, urban area or city, or county public entity ;

“current year” means a financial year which has already commenced but not yet ended;

“debt” means-

- (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of county urban area or, city, or other county public entity debt instruments: or
- (b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;

“delegation”, in relation to a duty, includes a lawful instruction or request to perform or to assist in performing the duty;

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“financial recovery plan” means a plan prepared in terms section 153 of this Act;

“financial statements”, in relation to county governments, cities and urban areas, or county public entities means statements consisting of at least-

- (a) a statement of the financial position;
- (b) a statement of the financial performance;
- (c) a cash-flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

“financial year” means the period of twelve months ending on 30th June of every year;

“financing agreement” includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a county, urban area or city, and county public entity undertakes to repay a long-term debt over a period of time;

“fruitless and wasteful expenditure” means expenditure that was made in vain and would be avoided if reasonable care is exercised;

“irregular expenditure” means expenditure incurred by a county, urban area, city or county public entity that, -

- (a) that contravenes this Act;
- (b) contravenes the Devolved Government Act, Urban Areas and Cities Act ;
- (c) contravenes the code of regulation for public servants; or
- (d) contravenes the supply chain management policy of the county or any other by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a county which falls within the definition of “unauthorized expenditure”;

“investment”, in relation to funds of a county, means-

- (a) the placing on deposit of funds of a county with a

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financial institution or

- (b) the acquisition of assets with the funds of a county that are not immediately required;

“lender” means a person who advances credit to either a county government, city, urban area or county public entity;

“organisation of county governments” refers to council of county governors provided for under the Intergovernmental Relations Act;

“serious financial problems” refers to the factors provided in section 145

“short-term debt” means debt repayable over a period not exceeding one year;

“long-term debt” means debt repayable over a period exceeding one year;

“prescribed” means prescribed by regulations made by a county government under this Act;

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|------------------------------|---|
| Principles of public finance | 4. A county government shall be guided and bound by the principles of public finance provided under Article 201 of the Constitution. |
| Object of Act | 5. The object of this Act is to secure sound and sustainable management of fiscal and financial affairs of the county governments. |
| Application | 6. (1) This Act applies to - <ul style="list-style-type: none"> (a) all the county governments provided under Article 6 of the Constitution and specified under the First Schedule of the Constitution; (b) all the decentralised units envisaged by Article 176 of the Constitution and established under the Devolved Government Act ; (c) the cities and urban areas envisaged under Article 184 of the Constitution and established under the Urban Areas and Cities Act; (d) the capital city as envisaged under Article 200 of the Constitution and as provided under the Urban and Cities Act; (e) all county public entities established by the county governments under any written law; <p>(2) In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and</p> |

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which regulates any aspect of the fiscal and financial affairs of counties, the provision of this Act shall prevail to the extent of the inconsistency.

PART II: ROLE OF THE GOVERNOR IN COUNTY FINANCIAL MANAGEMENT

Powers and
accountability of the
governor in financial
matters

7. (1) The governor, who is the chief executive of a county subject to Article 179 of the Constitution, shall-

- (a) provide general political guidance over the fiscal and financial affairs of the county;
- (b) monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer;
- (c) take all reasonable steps to ensure that the county performs its Constitutional and statutory functions within the limits of the county's approved budget;
- (d) within thirty days after the end of each quarter, ensure the submission a report to the county on the implementation of the budget and the financial state of affairs of the county; and
- (e) exercise the other powers and perform other duties assigned to the Governor in terms of this Act or delegated by the county to units of decentralization, including cities or urban areas, joint authorities or county public entities

(2) On the budget process and on other matters related to the budgeting process, the Governor of a county shall-

- (a) provide general political guidance over the budget process and the priorities that shall guide the preparation of a budget;
- (b) oversee and coordinate the preparation of the annual budget
- (c) exercise oversee the annual revision of the county integrated development plan in accordance with the

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Devolved Government Act and the Urban Areas and Cities Act;

- (d) coordinate the determination of how the integrated development plan is to be incorporated or revised for the purposes of the budget; and
- (e) take all reasonable steps to ensure that -
 - (i) the county assembly approves its annual budget before the commencement of the budget year;
 - (ii) the county's service delivery and budget implementation plan is approved by the county executive committee within twenty eight days after the approval of the budget; and
 - (iii) the annual performance contracts as required in by the Devolved Government Act and the Urban Areas and Cities Act for the county executive committee members and all devolved managers-
 - (aa) comply with this Act in order to promote sound financial management;
 - (ba) are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan; and
 - (ca) are undertaken in accordance with the Devolved Government Act and the Urban Areas and Cities Act.

(3) The governor shall within seven days report to the county assembly and the Controller of Budget any delay;

- (a) in the tabling of an annual budget;
- (b) the approval of the service delivery and budget implementation plan; or
- (c) the signing of the annual performance contracts.

(4) The governor shall ensure that -

- (a) the revenue and expenditure projections for each month and the service delivery targets and the performance indicators for each quarter as set out in the service delivery and budget implementation plan are made public not later than fourteen days after the approval of the service

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delivery and budget implementation plan;

- (b) the performance contracts of the county executive committee members, all senior managers and any other categories of officials as may be prescribed are made public not later than fourteen days after the approval; and
- (c) copies of performance contracts are submitted to the county assembly.

Role of County
Executive Committee

8. (1) Upon receipt of a statement or report, submitted by the accounting officer of the county in accordance with this Act the county executive committee shall-

- (a) consider the statement or report;
- (b) confirm whether the county's approved budget is implemented in accordance with the service delivery and budget implementation plan;
- (c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the county assembly;
- (d) issue any appropriate instructions to the accounting officer to ensure-
 - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and
 - (ii) that expenditure of funds and revenue collection proceed in accordance with the budget.
- (e) identify any financial problems facing the county, including any emerging or impending financial problems; and
- (f) in the case of annual report referred under section 132 of this Act, submit the report to the county assembly by 31st January of each year.

(2) Where a county faces any serious financial problems as provided in Part XIII the governor shall-

- (a) promptly respond to and initiate any remedial or

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corrective steps proposed by the accounting officer to deal with such problems, which may include-

- (i) steps to reduce spending when revenue is anticipated to be less than the expenditure projected in the county's approved budget;
 - (ii) the tabling of an supplementary budget: or
 - (iii) steps in terms of Part XIII of this Act;
- (3) The governor shall ensure that any revisions of the service delivery and budget implementation plan are made public promptly.

Delegation of powers and duties.

9. (1) The governor of a county, may-
- (a) delegate powers to a county executive member;
 - (b) in the case of the governor's powers relating to the administration of a county government, delegate to the county chief secretary, and county officers;
 - (c) in the case of the governor's powers relating to the administration of a city or municipality established under the Urban Areas and Cities Act, delegate to the manager of the city or municipality as the case may be; and
 - (d) in the case of the governor's powers relating to the administration of a county public entity which has a board of directors referred to in this Act and the Devolved Government Act, delegate to the managing director of the public entity.
- (2) A delegation in terms of subsection (1)-
- (a) shall be in writing;
 - (b) is subject to any limitations or conditions that the governor in consultation with the county executive committee may impose; and
 - (c) does not divest the governor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (3) The governor may confirm, vary or revoke any decision taken

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in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

PART III: COUNTY BUDGET AND TREASURY DEPARTMENTS

Establishment and duties of Budget and Treasury Departments

Establishment of the budget and treasury department.

10. (1) Every county government shall have a budget and treasury department.

(2) The budget and treasury department shall comprise of-

- (a) the executive committee member responsible for finance
- (b) the county principal secretary for finance;
- (c) the officials of the county budget and treasury department; and
- (d) any other persons employed by the county to work in the county budget and treasury department.

Duties and responsibilities of the executive committee member responsible for finance.

11. The executive committee member responsible for budget and treasury matters in the county shall be--

- (a) responsible and accountable to the Governor for the county budget and treasury functions;
- (b) advise the county executive committee on the budget and financial matters;
- (c) responsible for overseeing the administration and management of the county budget and treasury department; and
- (d) provide guidance to the accounting officer.

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Duties and responsibilities of the county principal secretary for finance.

12. The county principal secretary responsible for finance-

- (a) is administratively in charge of the budget and treasury department;
- (b) shall advise other county principal secretaries and other senior officials in the exercise of powers and duties assigned or delegated to them in terms of section 85; and
- (c) shall perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 9 be delegated by the governor to the county principal secretary responsible for finance.

Delegation of duties by the county principal secretary for finance.

13. (1) The county principal secretary responsible for finance may further delegate any of the duties referred to in section 12 (c)-

- (a) to an official in the budget and treasury department;
- (b) to the holder of a specific post in that department; or
- (c) with the concurrence of the chief secretary, to-
 - (i) any other official of the county government; or
 - (ii) any person contracted by the county government for the work of the department.

(2) If the county principal secretary responsible for finance sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the county, the county principal secretary responsible for finance shall be satisfied that effective systems and procedures are in place to ensure control and accountability.

(3) A further delegation in terms of subsection (1)-

- (a) shall be in writing;
- (b) is subject to such limitations or conditions as the county principal secretary responsible for finance may impose; and
- (c) does not divest the county principal secretary responsible for finance of the responsibility concerning the delegated duty.

(4) The county principal secretary responsible for finance may confirm, vary or revoke any decision taken in consequence of a further delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

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Competency levels of county budget and treasury department.

14. (1) All the senior officials of the budget and treasury department of a county government shall meet prescribed financial management competency levels.

(2) A county shall for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

(3) The Cabinet Secretary responsible for devolution and the Cabinet Secretary responsible for finance may assist county governments in the training of officials referred to in subsection (1).

Accounting officers

Designation of accounting officers.

15. (1) The governor shall designate persons to be known as accounting officers who are responsible for accounting in respect of county departments and entities as the governor may specify.

(2) An accounting officers for the purposes of this Act, shall exercise the functions and powers assigned by the governor in terms of this Act.

Fiduciary responsibilities of an accounting officer.

16. (1) The accounting officer shall-

- (a) act with fidelity, honesty, integrity and in the best interests of the county in managing its financial affairs;
- (b) disclose to the county assembly and the governor all material facts which are available to the accounting officer or reasonably discoverable and which may in any way influence the decisions or actions of the county government and the governor;
- (c) at all times in the performance of his functions prevent any prejudice to the financial interests of the county.

(2) An accounting officer shall not-

- (a) act in a way that is inconsistent with the duties assigned to accounting officers of a county government; or
- (b) use the position or privileges of, or confidential information obtained as accounting officer for personal gain or to improperly benefit another person.

Information to National Government Departments

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Information to the national government departments. 17. (1) County governments shall prepare and submit information to the national government departments that they may require to enable them perform their policy and other functions, including-

- (a) the national department responsible for devolved government;
- (b) the national department responsible for finance; and
- (c) and other national government departments

(2) The information provided under subsection (1) (a) shall be for purposes of enabling the department to exercise policy oversight over devolved governments as provided for in this Act or any other law

(3) The information provided under subsection (1) (b) shall be to enable the National Treasury to -

- (a) monitor revenue and expenditures of county governments and other public agencies;
- (b) money supply, remittances, interest rates, exchange rates and inflation;
- (c) lending, borrowing and public debt; and
- (d) any other matters pertaining to macro-economic stability.

Promotion of the objects of this Act by national departments 18. The National departments shall promote the object of this Act within the framework of co-operative government set out in Articles 6, 189, 220 and 225 of the Constitution. County Allocation of Revenue Bill.

PART IV: REVENUE FOR COUNTY GOVERNMENTS

County Government Revenues. 19. (1) A county Government sources of revenue shall include the following--

- (a) equitable shares of revenue raised nationally as provided in Articles 202 and 203 of the Constitution;
- (b) conditional and unconditional grants as provided in Article 202 of the Constitution;
- (c) equalization fund as provided for in Article 204 of the Constitution;
- (d) county own revenues as provided for in Article 209 (3)

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and (4) of the Constitution; and

(2) county government may also receive grants from other sources

(3) Revenues raised nationally shall be shared in the manner provided in the Constitution equitably between the national and county levels of government will be as specified in the Commission on Revenue Allocation Act and provided in the annual Division of Revenue Act

(4) The County Allocation Revenue Bill shall, for effective planning and budgeting by county governments, provide for each county estimates of revenue referred to in subsection (1) (a) (b) and (c)

Equitable and adequate allocation of financial resources to county governments.

20.(1) County governments shall, in line with the principle that funds must match and follow functions, be allocated sufficient funds to enable their performance of the functions allocated to them under the Fourth Schedule of the Constitution and any other functions that may be transferred to them in terms of Article 187 of the Constitution.

(2) The national government and the county governments, shall within the budgeting framework provided under the Intergovernmental Fiscal Relations Act, accurately cost the functions assigned to each level of government in order to determine the exact financial resources to be allocated to each level of government in terms of Article 202 and 203 of the Constitution.

(3) Allocation of any conditional and unconditional grants as contemplated under Article 202 of the Constitution shall be based on the criteria for equitable sharing of national revenue stipulated under Article 203 of the Constitution.

(4) Money allocated to a county government as a conditional grants shall be applied or distributed for the funding of specific projects and programs in the county on its service delivery entities that were the basis of the grant; and

(5) A county government may use its share of unconditional grants to finance any of its projects in its annual budget.

Equalization fund.

21. (1) Allocation of money to a county under the Equalization Fund shall be in accordance with the guidelines set out under Article 204 of the Constitution.

(2) The allocation of monies from the Equalization Fund

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amongst counties and within counties shall be effected in a manner that observes and promotes the principle of equitable development, including making provisions for marginalized groups and areas.

Donor grants.

22. (1) A county government may solicit, receive, budget, utilize and account for donor grants in accordance with the procedures specified in the Intergovernmental Fiscal Relations Act.

(2) The national public service values and the principles of public finance set out in Article 201 of the Constitution shall be observed in matters pertaining to the financial management of donor grants.

Contingency Fund.

23. (1) Every county government shall establish a Contingencies Fund, the operation of which shall be in accordance with the policy guidelines and legislation developed by the respective county government.

(2) Withdrawal of monies from the Contingencies Fund shall only be done after approval by the county governor following a resolution of the county executive committee to that effect.

(3) Withdrawal of monies under this section shall be reported to the county assembly during its next meeting after such withdrawal.

Revenue from County

Property rates.

24. (1) A county governments may levy property rates on properties within its area of jurisdiction.

Cap. 267, Cap. 266

(2) In determining the rate to be levied, the county government shall adhere to the Rating Act and the Valuation for Rating Act.

(3) A county government shall not exempt any person, institution or state organ from the payment of rates.

(4) A county government may consider adopting different methods of charging rates depending on the manner in which the land is being put into use, including basing it on improved and unimproved site values.

(5) In imposing rates, a county governments, shall provide tax and other incentives to promote investments within the county to broaden its tax base.

Entertainment tax

25. A county government shall impose entertainment tax in

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- Cap. 479 accordance with the Entertainments Tax Act and any other applicable law.
- Fees and charges. 26. A county governments may charge fees for any licence or permit in respect of any person or matter, premise or trade, whom or which the county government is empowered by this Act or any other Act to control, license or impose charges for any service or facility provided or goods or documents supplied in pursuance of the discharge of any power of the county government or otherwise.
- Royalties. 27. (1) A county government shall be entitled to receive a reasonable amount of royalties to ensure and promote protection and sustainability of a resource that originates from its area of jurisdiction but whose benefits spread into the jurisdiction of another county.
- (2) Without prejudice to provisions of subsection (1) a county government shall be entitled to thirty per cent of any revenue accruing to the national government from the exploitation of, or licence fee charged or issued in relation to any natural resource found within the jurisdiction of the county.
- (3) A county government shall be party to the negotiating team and party to any agreement that relates to the exploitation of any resource found within its area of jurisdiction.
- Receivers of tax and other revenue. 28. (1) The county executive member responsible for finance shall on the advice of the county principal secretary for finance, appoint persons to be known as receivers of revenue for the purpose of receiving and accounting for such county revenue as provided in the various laws governing the taxes and other revenues.
- (2) The receivers of revenue shall ensure that-
- (a) all revenues collectable by the county government are collected, received and accounted for;
- (b) all revenue collected is banked into the County Revenue Fund Account operated by the county as provided for in Article 207 of the Constitution; and
- (c) an account of all the revenue received and revenue outstanding for each year is prepared and submitted to the accounting officer;
- (3) The receiver of revenue appointed under subsection (1) may delegate any county public officer to be the collector of revenue for the purpose of collecting county revenue and

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remitting it to the receiver.

(4) A collector of revenue authorised as per subsection (3) shall remit all revenue collected to the receiver of county revenue within three working days after receiving it.

(5) A collector of revenue who collects revenue and fails to remit the revenue to the receiver of revenue commits an offence and is liable to a fine and penalty under the Anti-Corruption and Economic Crimes Act, 2003.

Kenya Revenue Authority.

No. 2 of 1995

29. (1) A county Governments may appoint Kenya Revenue Authority or any other institution established by the county government for that purpose as the collector of all tax revenues in respect of property and other taxes.

(2) A county governments shall enact laws and adopt policies and management practices necessary to effectively discharge the tax revenue collection functions as may be assigned under this Act.

(3) A county shall with approval of county assembly enter into a clear performance agreement with the Kenya Revenue Authority or such other institutions appointed for collection of revenue.

(4)The performance agreement will be submitted to the county assembly for approval within fourteen days.

Cash management

County Revenue Fund Account.

30. (1) There shall be a fund, to be known as the County Revenue Fund for each county government.

(2) The revenue received by a county government listed below shall be paid into its revenue fund account and includes—

- (a) intergovernmental transfers received by the county government;
- (b) county own revenues collected and received as specified in this Act;
- (c) donor grants;
- (d) money borrowed in accordance with Part VII of this Act;
- (e) Investment income received by the county from its assets;
- (f) other income, including dividends, received by the county

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from county public entities; and

- (g) any other moneys received by the county in the discharge of its functions.

(3) Withdrawals from the County Revenue Fund Account shall only be made with the approval of the Controller of Budget in accordance with the Appropriation Act.

Quarterly withdrawals from the revenue fund account.

31. (1) Subject to an to section fifty of this Act the accounting officer of a county government shall make quarterly requests to the Controller of budget for withdrawal of funds from the County Revenue Fund.

(2) Requests for withdrawal under subsection (1) shall be based on the cash flow projections.

(3) An accounting officer shall in addition to the request under subsection (1) submit to the Controller of Budget previous quarter report on utilization of funds evidencing level of compliance. .

Opening of bank operational accounts.

32. (1) Every county shall open and maintain at least one operational bank account.

(2) A county shall not open a bank account-

- (a) abroad;
- (b) with an institution not registered as a bank in terms of the Banking Act; or
- (c) otherwise than in the name of the county.

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(3) Money may be withdrawn from a county bank account only in terms of section 36.

Primary operational bank account.

33. (1) A county shall have a primary operational bank account and where a county-

- (a) has only one bank account, that account will be its primary operational bank account; or
- (b) has more than one bank account, it shall designate one of those bank accounts as its primary operational bank account.

(2) Monies payable into a county's primary operational bank account shall include-

- (a) Money transferred from the County Revenue Fund

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Account as specified in section 30 (2);

- (b) charity and other related funds;
- (c) any other moneys as may be received by the county which by is not required to be deposited into the County Revenue Fund Account

(3) A county shall take all reasonable steps to ensure that all moneys referred to in subsection (2) are paid into its primary operational bank account.

(4) No organ of state in the national government or the county government may transfer an allocation of money referred to in subsection (2) to a county except through the county's primary operational bank account.

(5) The accounting officer shall submit to the Controller of Budget and the Auditor-General, in writing, the name of the bank where the primary operational bank account of the county is held, and the type and number of the account.

Submission of bank account details to Controller of Budget..

34. (1) The accounting officer shall submit to the Controller of Budget in writing-

- (a) the name of the bank where the account has been opened, and the type and number of the account, within ninety days after the county has opened a new bank account; and
- (b) its primary operational bank account within 30 days after the county changes;
- (c) the name of each bank where the county holds a bank account, and the type and number of each account annually before the start of a financial year.

Control of county bank accounts.

35.(1) The county Principal Secretary responsible for Finance -

- (a) shall administer all the county's bank accounts;
- (b) is accountable to the county governor for the county's bank accounts: and
- (c) shall enforce and ensure compliance with this Act.

(2) The accounting officer may only delegate the duties referred to in subsection (1) (c) to the heads of departments.

Withdrawal from other county bank accounts.

36. (1) Only the accounting officer may withdraw money or authorise the withdrawal of money from any of the county's bank accounts, and

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the accounting officer may do so only-

- (a) to defray expenditure appropriated in terms of an approved budget;
- (b) to defray expenditure authorised in terms of Part V of the Act;
- (c) to defray unforeseeable and unavoidable expenditure authorised in terms of section 59 this Act;
- (d) in the case of a bank account opened in terms of section 33, to make payments from the account in accordance with subsection (3) of this section;
- (e) to pay over to a person or organ of state money received by the county on behalf of that person or organ of state, including-
 - (i) money collected by the county on behalf of that person or organ of state by agreement; or
 - (ii) any insurance or other payments received by the county for that person or organ of state;
- (f) to refund money incorrectly paid into a bank account;
- (g) to refund guarantees, sureties and security deposits;
- (h) for cash management and investment purposes in accordance with Part V of the Act;
- (i) to defray increased expenditure in terms of this Part of the Act; or
- (j) for such other purposes as may be prescribed.

(2) Any authorisation in terms of subsection (1) to a county public officer to withdraw money or to authorise the withdrawal of money from a bank account shall be in accordance with a framework as may be prescribed.

(3) No money may be withdrawn from the primary operational bank account without the authority of the county Principal Secretary for Finance.

(4) Money may be withdrawn from a bank account in terms of subsection (1)(b) to (j) without appropriation in terms of an approved budget.

(5) The county Principal Secretary for Finance shall within thirty

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days after the end of each quarter-

- (a) submit to the county assembly a consolidated report of all withdrawals made in terms of subsection (1)(b) to (j) during that quarter; and
- (b) submit a copy of the report to the Controller of Budget.

Relief, charitable trusts and other funds.

37. (1) No political institution or office-bearer of a county may set up a relief, charitable trust or other fund of whatever description except in the name of the county and only the County Principal Secretary for Finance may be the accounting officer of any such fund.

(2) A county may in terms of section 33 open a separate bank account in the name of the county for the purpose of a relief, charitable trust or other fund.

(3) Money received by the county for the purpose of a relief, charitable trust or other fund shall be paid into a bank account of the county or into a separate bank account that has been opened in terms of subsection (2).

(4) Money in a separate account opened in terms of subsection (2) may be withdrawn from the account without appropriation in terms of an approved budget but only -

- (a) by or on the written authority of the accounting officer acting in accordance with decisions of the county; and
- (b) for the purposes which, and subject to any conditions which the fund was established or the money in the fund was donated.

Management of Cash.

38. (1) A county government shall prescribe a framework within which the accounting officer shall-

- (a) conduct cash management and investments; and
- (b) invest money not immediately required.

(2) A county government shall establish an appropriate and effective cash management and investment policy.

(3) A bank where a county government at the end of a financial year holds a bank account, or held a bank account at any time during a financial year, shall—

- (a) within thirty days after the end of that financial year notify the County assembly, and the Controller of Budget the in

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writing, of such bank account, including-

- (i) the type and number of the account; and
 - (ii) the opening and closing balances of that bank account in that financial year; and
- (b) promptly disclose information regarding the account when requested by the County assembly or the Controller of Budget.

Asset Management

Transfer of county assets.

39. (1) A county government shall not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic county services.

(2) A county government may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the county government, in a meeting open to the public-

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of county basic services; and
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by the County government that a specific capital asset is not needed to provide the minimum level of basic services, may not be reversed by the County government after that asset has been sold, transferred or otherwise disposed of.

(4) A County government may delegate to the accounting officer to make the determinations referred to in this section in respect of movable capital assets below a value determined by the County government.

(5) Any transfer of ownership of a capital asset in terms of this section shall be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the county and any other relevant law.

PART V: PLANNING AND BUDGETING

Principles of planning and budgeting.

40. Planning and budgeting by county governments shall -

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- (a) be participatory, consultative, transparent and inclusive of all stakeholders;
- (b) be comprehensive and inclusive of all fiscal operations of the county government;
- (c) be informative and encompass analysis of the current situation, current strategies, goals and objectives;
- (d) be disciplined, realistic and linked to specific activities or objectives;
- (e) be predictable to ensure macro-economic stability;
- (f) be contestable to ensure that all sectors compete on equal footing for funding during budget planning and formulation;
- (g) be derived from unbiased projections of revenue and expenditure;
- (h) ensure that decision makers are responsible and accountable;
- (i) ensure that the budget process conforms to the essential principles for sound budget management; and
- (j) provide a performance perspective to the budget process by aligning expenditure to policy priorities.

Annual plan.

41. Every County government shall prepare an annual plan that includes—

- (a) strategic priorities for the medium term that reflect the County government's priorities and plans;
- (b) programmes to be delivered in the coming financial year detailing—
 - (i) the strategic priorities that the programme will contribute to,
 - (ii) the services or goods to be provided,
 - (iii) measurable indicators of performance,
 - (iv) the budget allocated to programmes,
- (c) payments on behalf of the County Government including grants, benefits and subsidies;

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- (d) significant capital developments;
- (e) description of intentions to develop capacity for physical, intellectual, human and other resources including measurable indicators where feasible;
- (f) summary budget; and
- (g) other relevant matters as may be prescribed.

Budget circular and guidelines.

42. (1) The Budget Council shall, issue the annual budget circular and guidelines, which shall provide for -

- (a) the form of the annual budget to be prepared by the national and county governments;
- (b) the form of resolutions and supporting documentation relating to the annual budget;
- (c) the number of years preceding and following the budget year for which revenue and expenditure history or projections shall be shown in the supporting documentation;
- (d) inflation projections to be used with regard to the budget;
- (e) uniform norms and standards concerning the setting of county tariffs, financial risks and other matters where a county Government uses its' county entity or other external mechanism for the performance of a county service or other function;
- (f) uniform norms and standards concerning the budgets of county entities; and
- (g) any other uniform norms and standards aimed at promoting transparency and expenditure control.

(2) The Budget Council, may take appropriate steps to ensure that a county government in the exercise of its fiscal powers does not materially and unreasonably prejudice-

- (a) national economic policies, particularly those on inflation, pricing and equity;
- (b) economic activities across county boundaries: and
- (c) the national mobility of goods, services, capital or labour.

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Budget resource envelop. 43. (1) The county government shall, before the budgeting process commences, establish its resources envelop which shall guide its budget preparation.

(2) An annual budget may only be funded from-

- (a) the equitable share of the revenue raised nationally;
- (b) realistically anticipated revenues to be collected locally;
- (c) cash-backed accumulated funds from previous years' surpluses not committed for other purposes;
- (d) conditional or unconditional grants;
- (e) Equalization Fund allocations; or
- (f) borrowed funds and grants.

(3) Revenue projections for budget purposes shall be realistic, taking into account-

- (a) projected revenue for the current year based on collection levels to date; and
- (b) actual revenue collected in previous financial years.

Budgeting Process. 44. (1) County governments shall implement the budget process on the basis of the timetable provided in the Schedule of this Act.

(2) The budget framework, including the timetable shall be reviewed by the Budget Council as provided by the Intergovernmental Fiscal Relations Act.

Budgeting framework. 45. (1) A county budget steering committee shall be established for the purpose of coordinating the budgeting process in the county.

(2) The functions of the budget steering committee shall be to-

- (a) review the county's integrated development plans in accordance with the national integrated development plans and strategic plans;
- (b) ensure that the county integrated development plan are updated in accordance with the Devolved Government Act, taking into account realistic revenue and expenditure projections for the Expenditure Framework period;
- (c) set budget ceilings for the various sectors taking into account the County Allocation of Revenue Bill, the

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national government's fiscal and macro-economic policy, and the projected revenues from own sources;

- (d) issue of the budget policy statement for the county in accordance with the strategic objectives and priorities; and
- (e) advise on the appropriate budget ceilings based on the county's priorities;

Budget working groups.

46. (1) On receipt of the yearly budget circular and guidelines, on 31st August the county budget steering committee shall, initiate the budgeting process as provided in the schedule-

- (a) appointing of the county estimates working group;
- (b) appointing of the county sector working group;
- (c) launching the sub-county, ward and village level budget forums in accordance with the provisions of the Devolved Government Act;
- (d) issuing the budgeting guidelines to working groups and budget forums in the prescribed form;

(2) The county estimates working group shall-

(a) produce revenue and expenditure projections for setting budget ceilings

(b) receive and review departmental budget submissions from departments, cities, municipalities and county public entities to confirm that they comply with the guidelines.

(c) prepare economic and financial strategy paper

(3) The county sector working groups in coordination with the sub-county, ward and village budget forums shall-

(a) receive budget submissions which will guide in preparation of the budget proposals by departments, cities and municipalities

(b) develop plans and priorities

(c) produce sector performance reports

Content of county budget.

47. (1) An annual budget of county shall provide--

- (a) estimates of revenue and expenditure, differentiating

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between recurrent and development expenditure in a proportion of not less than forty per cent for development expenditure;

- (b) proposals for financing any anticipated deficit;
- (c) proposals for financing cities and municipalities;
- (d) proposals for financing county public entities;
- (e) estimates shall include-
 - (i) the share of national revenues;
 - (ii) share of conditional and unconditional share of grants;
 - (iii) share of any allocation of equalization fund and the conditions thereon;
 - (iv) all projected county own revenues by classification;

(2) An annual budget of a county shall provide--

- (a) a summary of significant priorities;
- (b) explanation of how the annual budget relates to the fiscal objectives in the budget policy statement;
- (c) annual work plans;
- (d) county annual expenditure review reports;
- (e) proposed amendments to the budget and development related policies of the county;
- (f) particulars of the county's investments;
- (g) particulars of existing and proposed service delivery agreements;
- (h) material amendments to existing service delivery agreements;
- (i) the proposed cost of the salaries, allowances and benefits of the county public service personnel.

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Approval of annual budgets.

48. (1) The county executive shall submit the annual budget of the county to the county assembly for approval, two months before the end of each financial year;

Public consultations on annual budget.

49. (1) The Budget Committee shall, immediately after an annual budget is submitted in a county assembly —

- (a) make public the annual budget and the relevant documents as prescribed; and
- (b) invite the public to submit representations in connection with the budget.

(2) When the annual budget has been tabled by the Budget Committee, the county assembly shall consider the views of -

- (a) the public ; and
- (b) entities of the county government which made submissions on the budget.

(3) After considering all budget submissions, the county assembly shall give the county assembly committee member responsible for finance an opportunity-

- (a) to respond to the submissions; and
- (b) if necessary, to revise the budget and table amendments for consideration by the county assembly.

Approval of annual budgets.

50. (1) The county assembly shall approve the county annual budget by 20th June of every year

(2) An annual budget shall be approved together with the adoption of any necessary resolutions relating to -

- (a) county tariffs for the budget year;
- (b) measurable performance objectives for revenue from each source and for each vote in the budget;
- (c) any changes to the county's integrated development plan; and
- (d) any changes to the county's budget and development

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related policies.

(3) the speaker of the county assembly shall forward the Appropriation Bill based on the approved annual budget shall to the governor for assent by 30th June.

Budget implementation.

51. (1) The executive committee member responsible for finance shall ensure implementation of the approved budget, including taking all reasonable steps to certify-

- (a) that the spending of funds is in accordance with the budget; or
- (b) that the revenue and expenditure estimates are achieved

(2) The county Principal Secretary responsible for Finance shall no later than fourteen days after the approval of an annual budget submit to the Governor-

- (a) a draft service delivery and budget implementation plan for the budget year; and
- (b) drafts of the annual performance contracts.

Accounting officer to report shortfalls in budget or revenue.

52. (1) The accounting officer shall within fourteen days report in writing to the county assembly -

- (a) any impending-
 - (i) shortfalls in budgeted revenue; and
 - (ii) overspending of the county's budget; and
- (b) any steps taken to prevent or rectify such shortfalls or overspending.

(2) If county's bank account, or if the county has more than one bank account, the consolidated balance in those bank accounts, shows a net overdrawn position for the period exceeding a prescribed period, the accounting officer of the county shall promptly notify the county assembly -

- (a) the amount by which the account or accounts are overdrawn;
- (b) the reasons for the overdrawn account or accounts; and
- (c) the steps taken or to be taken to correct the matter.

(3) When determining the net overdrawn position for purposes of subsection (2), the accounting officer shall exclude any amounts

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reserved or pledged for any specific purpose or encumbered in any other way.

Expenditure on capital projects.

53. (1) A County may spend money on a capital project only if-

- (a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the County, has been appropriated in the capital budget
- (b) the project, including the total cost, has been approved by the county assembly:
- (c) the sources of funding have been considered, are available and have not been committed for other purposes.

(2) When approving a capital project, the county assembly shall consider-

- (a) the projected cost covering all financial years until the project is operational; and
- (b) the future operational costs and revenue of the project, including county tax and tariff implications.

Expenditure before assent to the Appropriation Act.

54. If the Appropriation Act for a financial year has not been assented to by the governor, or is not likely to be assented to, by the beginning of that financial year, the county assembly may authorize the withdrawal of money from the County Revenue Fund for the purpose of meeting expenditure necessary to carry on the services of the County government until such time as the Appropriation Act is assented to, under the terms that-

- (a) such funds shall not exceed in total one-half of the amount included in the estimates of expenditure for that year that have been tabled in the county assembly;
- (b) have been authorised by the Controller of Budget for withdrawal from the County Revenue Fund Account; and
- (c) such funds shall be included, under respective votes for the several services in respect of which they were withdrawn, in the Appropriation Act.

Failure to approve budget by county assembly.

55. (1) If a county assembly fails to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, the county assembly shall reconsider the budget and again vote on the budget, or on an amended version thereof, within seven

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days of the county assembly meeting that failed to approve the (2) If a county assembly has not approved an annual budget, including revenue-raising measures necessary to give effect to the budget, by the first day of the financial year, the Governor shall immediately report to the Controller of Budget, the Budget Council and the Cabinet Secretary responsible for Devolved Government.

Consequences for failure to approve budget by county assembly.

56. (1) If by the start of the financial year the county assembly has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the national government shall intervene in accordance with Article 190 of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved-

Non-compliance with provisions of this Part.

57. (1) The Governor shall, upon becoming aware of any impending non-compliance by the county government of any provisions of this Act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes, inform the County assembly, the Controller of Budget, the Cabinet Secretary responsible for devolved government and the Budget Council, in writing, of such impending non-compliance.

(2) If the impending non-compliance pertains to a time provision, the Budget Council may, on application by the Governor and on good cause shown extend any time limit or deadline contained in that provision..

(3) A Budget Council shall-

- (a) exercise the power contained in this subsection in accordance with a prescribed framework; and
- (b) promptly notify the affected county assembly, in writing, of any extensions given in terms of this subsection.

(4) The governor shall, upon becoming aware of any actual non-compliance by the county of a provision of this Part, inform the county assembly, the Controller of Budget, the Cabinet Secretary responsible for devolved government and the Budget Council any remedial or corrective measures the county intends to implement to avoid a recurrence.

(5) Non-compliance by a county with a provision of this Part relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or supplementary budget.

Supplementary Appropriation Bill.

58. (1) The County government may spend money that has not been

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appropriated if;-

- (a) the amount appropriated under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- (b) money has been withdrawn from the Contingencies Fund.

(2) The approval of the county assembly for any spending shall be sought within two months after the first withdrawal of the money.

(3) If the county assembly is not sitting, or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the county assembly has approved spending, an appropriation Bill shall be introduced for the appropriation of the money spent.

(5) In any particular financial year, a county government may not spend more than ten per cent of the sum appropriated by the county assembly for that financial year unless, in special circumstances, the county assembly has approved a higher percentage.

(6) Each supplementary budget supporting a Supplementary Appropriations Bill shall detail the effect of the expenditure changes on performance against the fiscal principles and the fiscal objectives in the budget policy statement.

(7) If the county assembly revises an approved annual budget through a supplementary budget it shall-

- (a) adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;
- (c) within a prescribed framework, authorize unforeseeable and unavoidable expenditure recommended by the governor of the county;
- (d) authorize the utilization of projected savings in one vote

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towards spending under another vote;

- (e) authorize the spending of funds that were unspent at the end of the past financial year where the under-spending could not reasonably have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the county assembly;
- (f) correct any errors in the annual budget: and
- (g) provide for any other expenditure within a prescribed framework.

(8) A supplementary budget shall be in the prescribed form.

(9) When a supplementary budget is submitted to the county assembly, it shall be accompanied by-

- (a) an explanation on how the adjustments budget affects the county annual budget:
- (b) a motive of any material changes to the county annual budget:
- (c) an explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and
- (d) any other supporting documentation that may be prescribed.

Unforeseen and unavoidable expenditure.

59. (1) The Governor shall, in an emergency or other exceptional circumstances authorize unforeseeable, unavoidable or contingency expenditure for which no provision was made in an approved budget.

(2) The expenditure specified under subsection (1)-

- (a) shall be in accordance with any framework that may be prescribed by the county assembly;
- (b) may not exceed ten per cent of the approved annual budget:
- (c) shall be reported by the governor to the county assembly at its next meeting; and
- (d) shall be appropriated in a supplementary budget.

Reallocation of funds appropriated.

60. (1) An accounting officer may utilize a saving in a principal item of a vote appropriated within a vote towards the defraying of excess

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expenditure under another principal item, unless the Governor directs otherwise.

(2) An accounting officer shall not authorize the transfer of an amount that is appropriated—

- (a) for transfer to another entity or individual; or
- (b) for capital expenditure, except to defray other capital expenditure.

(3) An accounting officer may reallocate funds between programs, activities, or between principal items, vote heads and sub-votes, in the budget for a financial year if—

- (a) there are provisions in the budget of a program, activity, or between principal items, vote head and sub-votes which are unlikely to be utilized;
- (b) a request for the reallocation has been made to the accounting officer explaining the reasons for the reallocation and the accounting officer has approved the request; and
- (c) the total sum of all reallocations made to or from a programme, activity or between principal items, vote heads and sub-votes does not exceed ten percent of the total expenditure approved for that program, activity, or between principal items, vote heads and sub-votes for that financial year.

Shifting of funds between multi-year appropriations.

61. When funds for a capital programme are appropriated for more than one financial year, expenditure for that programme during a financial year may exceed the amount of that year's appropriation for that programme, provided that-

- (a) the increase does not exceed twenty per cent of that year's appropriation for the programme;
- (b) the increase is funded within the following year's appropriation for that programme;
- (c) the county executive committee member responsible for finance certifies that-
 - (i) actual revenue for the financial year is expected to exceed budgeted revenue; and
 - (ii) sufficient funds are available for the increase without incurring further borrowing beyond the annual budget

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limit;

- (d) prior written approval is obtained from the Governor for the increase.

Contracts having future budgetary implications.

62. (1) A county government may enter into a contract which may impose financial obligations on the county government beyond a financial year, but if the contract seeks to impose financial obligations on the county beyond the three years covered in the annual budget for that financial year, it may do so only if-

- (a) the county executive committee member responsible for finance, at least sixty days before the meeting of the county assembly at which the contract is to be approved-
- (i) has, in accordance with this Act-
 - (aa) made public the draft contract and an information statement summarizing the county's obligations in terms of the proposed contract; and
 - (ba) invited the local community and other interested persons to submit to the county assembly comments or representations in respect of the proposed contract; and
 - (ii) has solicited the views and recommendations of-
 - (aa) the county assembly and the county executive committee and;
 - (ba) the relevant organs of the sub-counties.
- (b) the county assembly has taken into account-
- (i) the county's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
 - (ii) the impact of those financial obligations on the county's future county tariffs and revenue;
 - (iii) any comments or representations on the proposed contract received from the public and other interested persons; and
 - (iv) any written views and recommendations on the proposed contract by the county principal secretary for finance; and
- (c) the county assembly has adopted a resolution in which it-

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- (i) determines that the County will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
- (ii) approves the entire contract exactly as it is to be executed; and
- (iii) authorizes the county secretary responsible for finance to sign the contract on behalf of the County.

(2) The process under subsection (1) does not apply -

- (a) to contracts for long-term debt; or
- (b) to contracts-
 - (i) for categories of goods as may be prescribed; or
 - (ii) in terms of which the financial obligation on the county is below a prescribed value.

(3) All contracts that impose a financial obligation on a county-

- (a) shall be made available in their entirety to the county assembly; and
- (b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act.

(4) Contracts in respect of which the financial obligation on the county is below a prescribed value are not affected by these provisions.

Quarterly budget statements.

63. (1) The accounting officer shall by the end of each quarter submit to the county assembly a statement in the prescribed format on the state of the County's budget reflecting the following particulars for the quarter and the financial year-

- (a) actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure, per vote;
- (d) actual capital expenditure, per vote;
- (e) the amount of any allocations received;
- (f) actual expenditure on those allocations; and

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- (g) when necessary, an explanation of-
 - (i) any material variances from the county's projected revenue by source, and from the county's expenditure projections per vote;
 - (ii) any material variances from the service delivery and budget implementation plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the county's approved budget.

(2) The statement contemplated in subsection (1) shall include-

- (a) a projection of the relevant county's revenue and expenditure for the rest of the financial year, and any revisions from initial projections;
- (b) the prescribed information relating to the state of the budget of the county

(3) The amounts reflected in the statement shall in each case be compared with the corresponding amounts budgeted for in the county's approved budget.

(4) The statement to the county assembly shall be in the format of a signed document and in electronic format.

(5) An accounting officer of a county which has received an allocation during any particular quarter shall, by no later than thirty working days, coordinate the preparation of the statement reflecting the particulars of the allocation for submission to county assembly.

(6) The county executive committee member responsible for finance shall at the end of each quarter ensure the preparation of a consolidated statement on the state of the county budget and financial status for submission to the county assembly.

(7) The consolidated statement referred under subsection (6) shall be submitted to the Controller of Budget not later than forty five days after the end of each quarter.

(8) A county shall make public the consolidated statement on the state of the county budget and financial status referred under subsection (6) in a prescribed format.

Mid-year budget and performance assessment.

64. (1) The county executive committee shall by the 31st of January of each year assess and provide a report on the performance of the

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county during the first half of the financial year.

(2) In carrying out the assessment, the committee shall take into account -

- (a) the monthly statements for the first half of the financial year;
- (b) the county's service delivery performance during the first half of the financial year, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan;
- (c) the past year's annual report, and progress on resolving problems identified in the annual report; and
- (d) the performance of every county public entities under the sole or shared control of the county, taking into account reports from any such entities;

(3) The report referred to in subsection (1) shall be submitted to the county assembly and the Senate

(4) The county executive committee shall, as part of the review-

- (a) make recommendations as to whether a supplementary budget is necessary: and
- (b) recommend revised projections for revenue and expenditure to the extent that this may be necessary.

Reports on failure to adopt or implement budget-related and other policies.

65. The county executive committee shall inform the county assembly, in writing, of-

- (a) any failure by the county assembly to adopt or implement a budget-related policy or a supply chain management policy; or
- (b) any non-compliance by a political structure or office-bearer of the county with any such policy.

Unspent funds.

66. (1) The appropriation of funds in an annual or adjustments budget lapses to the extent that those funds are unspent at the end of the financial year to which the budget relates except in the case of an appropriation for expenditure made for a period longer than that financial year.

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(2) The balance of an appropriation that has not been spent or committed at the end of the financial year for which it was appropriated shall lapse at the end of that financial year.

(3) Any money appropriated that has been withdrawn from the County Revenue Fund Account but has not been spent or committed at the end of the financial year shall be paid into the County Revenue Fund Account.

PART VI: BORROWING

Approval by county assembly.

67. (1) A county may, in accordance with Article 212 of the Constitution, the Public Financial Management Act, the Intergovernmental Fiscal Relations Act and the provision of this Act-

- (a) raise loans for capital expenditure for the county government capital budget;
- (b) raise loans for current expenditure only when necessary for bridging purposes during a fiscal year;
- (c) bind itself and a future county government in the exercise of its legislative and executive authority to secure loans or investments for the county; and
- (d) ensure borrowing and related loans are reviewed and recommended by the Intergovernmental Loans and Grants Council as provided for in the Intergovernmental Fiscal Relations Act.

(2)The county government shall consolidate all borrowing requests including for cities and urban areas and county public entities, and present the consolidated request to the Intergovernmental Loans and Grants Council;

Capital projects.

68. (1) A county may borrow money to finance capital projects only if the provisions outlined under section 69 are satisfied-

(2) Before approving a capital project to be financed in terms of subsection (1) the county assembly shall take into account-

- (a) public views on the budget and loan proposals;
- (b) application, management and servicing of previous loans; and
- (c) proportion of total loan portfolio of the county relative to both its annual budget and gross domestic product.

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Conditions for borrowing by counties.

69. A county may borrow only if-

- (a) provision of the guarantee has been reviewed and recommended by the Intergovernmental Loans and Grants Council as provided for in the Intergovernmental Fiscal Relations Act;
- (b) section 70 has been complied with, if security is to be provided by the county.

Security by counties.

70. (1) A county may, by resolution of its county assembly, and approval by the Intergovernmental Loans and Grants Council, provide security for-

- (a) any of its debt obligations;
- (b) any debt obligations of a city, urban areas or county public entity under its sole control; or
- (c) contractual obligations of the county undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the county or such other person for the purpose of achieving the objects of devolved governments in terms of Article 227 of the Constitution.

(2) A county may in terms of subsection (1) provide any appropriate security by-

- (a) giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral;
- (b) undertaking to effect payment directly from money or sources that may become available and to authorise the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations;
- (c) undertaking to deposit funds with the lender, investor or third party as security;
- (d) agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures;
- (e) ceding as security any category of revenue or rights to

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future revenue;

- (f) undertaking to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
- (g) undertaking to retain revenues or specific county tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations;
- (h) undertaking to make provision in its budgets for the payment of its financial obligations, including capital and interest;
- (i) agreeing to restrictions on debt that the county may incur in future until the secured debt is settled or the secured obligations are met; and
- (j) agreeing to such other arrangements as the county may consider necessary and prudent.

(3) A County assembly resolution authorising the provision of security in terms of subsection (2)(a)-

- (a) shall determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic county services: and
- (b) if so, shall indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic county services will be protected.

(4) If the resolution has determined that the asset or right is necessary for providing the minimum level of basic county services, neither the party to whom the county security is provided nor any successor or assignee of such party, may, in the event of a default by the county, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic county services.

(5) A determination in terms of subsection (3) that an asset or right is not necessary for providing the minimum level of basic county services is binding on the county until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

Duty for disclosure
when borrowing.

71. (1) A public officer involved in the borrowing of money by a county shall, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor-

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- (a) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of the prospective lender or investor; and
- (b) take reasonable care to ensure the accuracy of any information disclosed.

(2) A lender or investor may rely on written representations of the county signed by the accounting officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading.

County guarantees.

72.(1) A county may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions-

- (a) the guarantee shall be within limits specified in the county's approved budget;
- (b) that the guarantee is authorised by the county assembly in the same manner and subject to the same conditions applicable to a county in terms of this Act if it incurs debt;

(2). A county may guarantee the debt of a county public entity under its shared control or of any other person, but only with the approval of the Intergovernmental Loans and Grants Council only if the county purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the county's potential financial exposure as a result of such guarantee.

Short-term debt.

73. (1) A county may incur short-term debt only in accordance with and subject to the provisions of this Act and only when necessary to bridge-

- (a) shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or
- (b) capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.

(2) The short term debts under subsection (1) may be incurred only if-

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- (a) a certified resolution of the county assembly, approving the debt agreement signed by the clerk of the county assembly;
 - (b) the accounting officer has signed the agreement or other document which creates or acknowledges the debt; and
 - (c) the cumulative short term debt does not exceed 5% of the revenues received by the county in the previous financial year.
- (3) For the purpose of subsection (2)(a), a county assembly may-
- (a) approve a short-term debt transaction individually; or
 - (b) approve an agreement with a lender for a short-term credit facility to be accessed as and when required, including a line of credit or bank overdraft facility, provided that-
 - (i) the credit limit shall be specified in the resolution of the county assembly;
 - (ii) the terms of the agreement, including the credit limit, may be changed only by a resolution of the county assembly; and
 - (iii) the county executive committee approves a credit facility that is limited to emergency use the accounting officer shall notify the county assembly in writing as soon as possible of the amount, duration and cost of any debt incurred in terms of such a credit facility, as well as options for repaying such debt;

Long-term debt.

74. (1) A county may incur long-term debt only in accordance with and subject to any applicable provisions of this Act, and only for the purpose of-

- (a) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of devolved government as provided under Article 175 and 220 of the Constitution, including costs referred to in subsection (4) of this section; or
- (b) re-financing existing long-term debt subject to subsection (5) of this section.

(2) A county may incur long-term debt only if-

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- (a) the county assembly has approved the loan;
 - (b) the national government has provided guarantee for the loan in accordance with the provisions of the Intergovernmental Fiscal Relations Act; and
 - (c) the accounting officer has signed the agreement or other document which creates or acknowledges the debt.
- (3) A county may incur long-term debt only if the accounting officer-
- (a) has, in accordance with the Devolved Government Act-
 - (i) at least twenty one days prior to the meeting of the county at which approval for the debt is to be considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided, and
 - (ii) invited the public, including professional bodies to submit written comments to the county in respect of the proposed debt; and
 - (b) has submitted a copy of the information statement to the county assembly at least twenty one days prior to the meeting of the county, together with particulars of
 - (i) the essential repayment terms, including the anticipated debt repayment schedule; and
 - (ii) the anticipated total cost in connection with such debt over the repayment period.
- (4) Capital expenditure contemplated in subsection (1)(a) may include-
- (a) financing costs, including-
 - (i) capitalised interest for a reasonable initial period;
 - (ii) costs associated with security arrangements in accordance with this section;
 - (iii) discounts and fees in connection with the financing;
 - (iv) fees for legal, financial, advisory, trustee,

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credit rating and other services directly connected to the financing; and

- (v) costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing;
- (b) costs of professional services directly related to the capital expenditure; and
- (c) such other costs as may be prescribed.

(5) A county may borrow money for the purpose of re-financing existing long-term debt, provided that-

- (a) the existing long-term debt was lawfully incurred;
- (b) the re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment for which the money was originally borrowed;
- (c) the net present value of projected future payments, including principal and interest payments after re-financing is less than the net present value of projected future payments before re-financing; and
- (d) the discount rate used in projecting net present value referred to in paragraph (c), and any assumptions in connection with the calculations, shall be reasonable and in accordance with criteria set out in a framework that may be prescribed.

(6) A county's long-term debt shall be consistent with its capital budget.

County Infrastructure Development Fund.

75. (1) There is established a County Infrastructure Development Fund.

(2) The Fund shall offer long term loans for the purpose of infrastructure development and capital investments in county governments.

(3) Details on the capitalisation, composition, operations and financing mechanism of the Fund shall be as provided by regulations passed by the Senate.

PART VII: FINANCIAL MANAGEMENT IN COUNTY GOVERNMENTS

Role of an accounting officer in financial management.

76. (1) An accounting officer shall be responsible for ensuring -

- (a) the sound and effective management of the financial

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affairs in accordance with the norms and standards prescribed in the Public Finance Management Act;

- (b) the resources of the county are used efficiently and economically to ensure value for money;
- (c) full and proper records of the financial affairs of the county are properly kept in accordance with the International Public Sector Accounting Standards;
- (d) establishment and maintenance of effective, efficient and transparent systems for-
 - (i) financial and risk management; and
 - (ii) internal controls and audit operations in accordance with norms and standards as provided under subsection (1) (a) of this section;
- (e) unauthorised, irregular, wasteful and fruitless expenditure and other losses are prevented;
- (f) disciplinary or, when appropriate, criminal proceedings are instituted against any official of the county who is suspected to have committed an act of financial misconduct; and
- (g) the county has and implements-
 - (i) a taxation policy prescribed under Article 209 (2) of the Constitution or prescribed by an Act of Parliament;
 - (ii) a credit control and debt collection policy; and
 - (iii) a supply chain management policy in accordance with the provisions this Act and any national legislation enacted to give effect to Article 227 of the Constitution;

(2) The accounting officers shall account for the County Revenue Fund account and recurrent and development accounts including-

- (a) any relief, charitable trust or other fund set up by the county government; and
- (b) other fund accounts as may be provided by an Act of Parliament or law made by the county assembly.

(3) The accounting officers shall be responsible for the preparations of the county budgets

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Management of Assets and liabilities.

77. (1) The accounting officer of a county is responsible for the management of-

- (a) the assets of the county government, including the safeguarding and the maintenance of those assets; and
- (b) the liabilities of the county government.

(2) The accounting officer shall for the purposes of subsection (1) take all reasonable measures to ensure-

- (a) that the county has and maintains a management, accounting and information system that accounts for the assets and liabilities of the county government;
- (b) that the county government's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) that the county government has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Management of Revenue.

78. (1) An accounting officer of a county is responsible for the management of the revenues of the county government.

(2) The accounting officer shall for the purposes of subsection (1) take all reasonable measures to ensure-

- (a) that the revenue collector remits all the revenues collected into the revenue fund account established under Article 207 of the Constitution;
- (b) that accounts for county tax, royalties, fees and charges for county services are prepared on a monthly basis;
- (c) that all money received is promptly deposited in accordance into the Revenue Fund bank account;
- (d) that the county government has and maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (e) that the county government has and maintains a system of internal controls in respect of debtors and revenue, as

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may be prescribed;

- (f) that the county government charges interest on arrears without exception; and
- (g) that all revenue received by the county government, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officers shall inform their respective Executive Committee Member, of any payments in arrears for periods of more than thirty days from an organ of state due to the county government or its entities in respect of rates or any tax or fees and charges.

(4) where a state organ fails to meet the obligations referred to in subsection (3), the Governor shall refer the matter to the county assembly, the Senate, Auditor General and relevant Cabinet Secretary.

(5) The accounting officers shall ensure that-

- (a) any funds collected by the county government on behalf of another state organ is transferred to that organ of state on a weekly basis; and
- (b) that such funds are not used for the purposes of the county government.

Expenditure
management.

79. (1) The accounting officers of a county government are responsible for the management and control of expenditure

(2) For the purpose of subsection (1), the accounting officer shall take all reasonable steps to ensure that—

- (a) the county government has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) the county government has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the county government; and
 - (iii) accounts for payments made by the county government;

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- (c) the county government operates and maintains a system of internal control in respect of creditors and payments;
- (d) payments by the county government are made-
 - (i) directly to the person to whom it is due unless authorized by the creditor in writing for payment to be made to a third party, with reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only and only up to a prescribed limit;
- (e) all monies owed by the county government shall be paid within thirty days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) the county government makes all the remittances of taxes, levies, duty, pension, health insurance, audit fees and other statutory commitments;
- (g) any dispute concerning payments due by the county government to another organ of state is disposed of in terms of laws and legal frameworks provided for disputes between organs of state;
- (h) the county's working capital is managed effectively and economically in terms of the prescribed cash management and investment framework;
- (i) the county government's supply chain management policy is implemented in a way that is fair, equitable, transparent, competitive, and cost-effective in a manner that is consistent with Article 227 of the Constitution; and
- (j) all financial accounts of the county government are closed at the end of each month and reconciled with its records.

Report to county assembly on staff expenditure.

80. An accounting officer shall, on a quarterly basis, report to the county assembly on all expenditure incurred by the county.

Conditions for payments for contracted works, goods and services.

81. (1) Before payment for contracted works, goods and services, the accounting officers shall satisfy that the contractor-

- (a) has the capacity and has agreed-

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- (i) to comply with any agreement with the county government;
 - (ii) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement;
 - (iii) to report at least on a monthly basis to the accounting officer on actual expenditure against such transfer; and
 - (iv) to submit its audited financial statements for its financial year to the accounting officer promptly;
- (b) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and
 - (c) has in respect of previous similar transfers complied with all the requirements of this section.

(2) where a contractor fails to comply with the requirements of subsection (1), the county may make payment to the contractor provided that-

- (a) subsection (1)(a) and (b) is complied with; and
- (b) the county assembly has approved the transfer.

(3) The accounting officer shall through contractual and other appropriate mechanisms enforce compliance with subsection (1).

(4) Subsection (1) (a) does not apply to a contractor serving the vulnerable and marginalised groups, provided that-

- (a) the payment does not exceed the limits prescribed by the regulations ; and
- (b) the accounting officers ensure that the targeted beneficiaries receive benefit of the transferred funds;

Reports and reportable matters

General reporting obligations.

82. (1) An accounting officer responsible for finance , shall submit to the Controller of Budget such information, returns, documents, explanations and motivations in a prescribed format as required by this Act.

(2) If the accounting officer is unable to comply with any of the responsibilities in terms of this Act, the officer shall promptly report the inability, together with reasons, to the county executive

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committee.

Information to be made public.

83. (1) The accounting officers shall place on the county website or any other media prescribed by the Devolved Government Act, the following documents of the county-

- (a) the annual budgets and all budget-related documents;
- (b) all budget-related policies;
- (c) the annual report;
- (d) all performance contracts required in terms of the Devolution Act;
- (e) all service delivery agreements;
- (f) all long-term borrowing contracts;
- (g) all supply chain management contracts above a prescribed value;
- (h) an information statement containing a list of assets over a prescribed value that have been disposed of during the previous quarter;
- (i) contracts to which subsection (1) of section 82 applies;
- (j) public-private partnership agreements;
- (k) all quarterly reports tabled in the county assembly; and
- (l) any other documents that may be placed on the website in terms of this Act or any other applicable legislation, or as may be prescribed.

(2) A document referred to in subsection (1) shall be placed on the website not later than five days after the date of its tabling in the county assembly or the date on which it was made public, whichever is earlier.

Protection of accounting officers.

84. (1) An accounting officer shall not be victimized, discriminated, demoted in rank, dismissed, removed from office or otherwise subjected to disciplinary action by virtue of his or her actions done in in compliance with the provisions of this Act.

(2) A member of a county assembly or county executive or any other person who directly or indirectly contravenes subsection (1) commits an offence and is liable a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or

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both.

Financial Management

Delegation of financial matters to heads of departments

85. (1) An accounting officer shall delegate financial management powers to heads of departments

(2) The heads of departments shall have an obligation to assist the accounting officers in managing and co-ordinating the financial affairs of their respective departments.

(3) A delegation in terms of subsection (1)-

- (a) shall be in writing by name;
- (b) is subject to such limitations and conditions as the accounting officer may impose; and
- (c) does not divest the accounting officers' of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(4) The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or further delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Obligations of heads of departments.

86. (1) Any county public officer exercising county financial responsibilities shall ensure that -

- (a) the system of financial management and internal control established for the county is carried out diligently;
- (b) the financial and other resources of the county are utilised effectively, efficiently, economically and transparently;
- (c) any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented;
- (d) all revenue due to the county is collected;
- (e) the assets and liabilities of the county are managed effectively and that assets are safeguarded and maintained to the extent that is necessary;
- (f) all information required by the accounting officer for compliance with the provisions of this Act is timeously submitted to the accounting officer; and

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- (g) the provisions of this Act, to the extent applicable to that county public official, including any delegation in terms of section 85 are complied with.

(2) A county public official shall perform the functions referred to in subsection (1) subject to the directions of the accounting officer.

PART VIII: FINANCIAL MANAGEMENT IN URBAN AREAS AND CITIES

City or municipality
Manager to be
accounting officer.

87. The manager of a city or a municipality is the accounting officer of the city or municipality for the purposes 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) provide guidance and advice on compliance with this Act to-
 - (i) the political bodies, political office-bearers and officials of the city or municipality; and
 - (ii) any city or municipal entity under the sole or shared control of the city or municipality.

Accountability for city
or municipality financial
management and
administration.

88. (1) The accounting officer of a city or municipality is responsible and accountable for the management and financial administration of the city or municipality, and shall for this purpose take all reasonable steps to ensure that-

- (a) the resources of the city or municipality are used effectively, efficiently and economically;
- (b) full and proper records of the financial affairs of the city or municipality are kept in accordance with any prescribed norms and standards;
- (c) the city or municipality has and maintains effective, efficient and transparent systems-
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit operating in accordance with any prescribed norms and standards;
- (d) unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented;
- (e) disciplinary or, when appropriate, criminal proceedings are instituted against any official of the city or municipality who

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has allegedly committed an act of financial misconduct or an offence in accordance with this Act; and

- (f) the city or municipality has and implements-
 - (i) a tariff policy referred to in Devolve Government Act;
 - (ii) a rates policy as may be required in terms of this Act, the Rating Act and Valuation for Rating Act or any other applicable national legislation;
 - (iii) a credit control and debt collection policy in accordance with this Act; and
 - (iv) a supply chain management policy in accordance with this Act and the Public Procurement and Disposal Act or any other national or county legislations.

Cap 267, Cap 266

(2) The accounting officer is responsible for and shall account for all bank accounts of the city or municipality, including any bank account opened for-

- (a) any relief, charitable, trust or other fund set up by city or urban area in accordance with this Act; or
- (b) any other purpose referred to in this Part.

Financing of cities and municipalities.

89. Cities and municipalities will finance their functions through-
- (a) budget allocations from the county government under which the city or municipality falls;
 - (b) any taxes, fees and charges assigned by the county government to the city or municipality;
 - (c) national government grants assigned through the county government budget;
 - (d) grants from other organisations;
 - (e) loans guaranteed through the framework provided under the Intergovernmental Fiscal Relations Act;
 - (f) loans from the County Infrastructure Development Fund; and
 - (g) investment income.

Asset and liability

90. (1) The accounting officer of a city or municipality is responsible

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management by City or municipality.

for the management of-

- (a) the assets of the city or municipality, including the safeguarding and the maintenance of those assets; and
- (b) the liabilities of the city or municipality.

(2) The accounting officer shall for the purposes of subsection (1) take all reasonable steps to ensure that -

- (a) the city or municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the city or municipality;
- (b) the city's or municipality's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) the city or municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management by city or municipality.

91. (1) The accounting officer of a city or municipality is responsible for the management of the revenue of the municipality.

(2) Revenues for the financing of urban areas and cities under section 89 shall be raised through-

- (a) equitable share of the county share of revenue raised nationally;
- (b) conditional grants allocated from the county's share of such grants;
- (c) property and entertainment taxes raised from within the jurisdiction of the respective urban area or city;
- (d) fees and charges collected from within the jurisdiction of the respective urban area or city;
- (e) donor grants; and
- (f) funds raised through borrowing by the county on behalf of the urban area or city in accordance with Part VI of this Act and the Intergovernmental Fiscal Relations Act;

(3) The accounting officer shall for the purposes of collection systems consistent with this Act and the Urban Areas and Cities Act and municipality's credit control and debt collection policy ensure

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that—

- (a) revenue due to the city or municipality is collected on a monthly basis;
- (b) accounts for city or municipal tax and charges for city or municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- (c) all money received is promptly deposited in accordance with this Act into the city or municipality's primary and other bank accounts;
- (d) the city or municipality maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (e) the city or municipality maintains a system of internal control in respect of debtors and revenue, as may be prescribed;
- (f) the city or municipality charges interest on arrears, except where the council has granted exemptions in accordance with its budget-related policies and within a prescribed framework; and
- (g) all revenue received by the city or municipality, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(4) The accounting officer shall immediately inform the governor of any payments due by an organ of state to the city or municipality in respect of city or municipal tax or for city or municipal services, if such payments are regularly in arrears for periods of more than 30 days.

(5) The accounting officer shall take all reasonable steps to ensure that any funds collected by the city or municipality on behalf of another organ of state is transferred to that organ of state on a weekly basis and that such funds are not used for purposes of the city or municipality.

Monthly reconciliations of revenue.

92. The accounting officer of a city or municipality shall take all reasonable steps to ensure that all revenue received by the entity, including revenue received by any collecting entity on its behalf, is

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reconciled on a monthly or more regular basis; and that all accounts with the county government or county public entity are reconciled each month.

Expenditure management by city or municipality.

93. (1) The accounting officer of a city or municipality is responsible for the management of the expenditure of the city or municipality.

(2) The accounting officer shall for the purpose of subsection (1) take all reasonable steps to ensure that-

- (a) the city or municipality maintains an effective system of expenditure control including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) all money owing by the entity is paid within thirty days of receiving the relevant invoice or statement unless prescribed otherwise for certain categories of expenditure;
- (c) the city or municipality has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the city or municipality; and
 - (iii) accounts for payments made by the city or municipality;
- (d) the city or municipality has and maintains a system of internal control in respect of creditors and payments;
- (e) payments by the city or municipality are made-
 - (i) directly to the person to whom it is due unless agreed otherwise only for reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit;
- (f) that the entity complies with its tax, duty, pension, medical aid, audit fees and other statutory commitments;

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- (g) that the city or municipality's available working capital is managed effectively and economically in terms of any prescribed cash management and investment framework;
- (h) the city or municipality has and implements a supply chain management policy in accordance with this Act and the Public Procurement and Disposal Act or other legislations, and in a way that is fair, equitable, transparent and cost-effective.

Budget implementation by a city or municipality.

94. The accounting officer of a city or municipality is responsible for implementing the city or municipality budget, including taking effective and appropriate steps to ensure that-

- (a) the spending of funds is in accordance with the budget;
- (b) revenue and expenditure are properly monitored; and
- (c) spending is reduced as necessary when revenue is anticipated to be less than projected in the budget.

City or municipality accounting officer to act in best interest.

95. (1) The accounting officer of a city or municipality shall-

- (a) act with fidelity, honesty, integrity and in the best interests of the city or municipality in managing its financial affairs;
- (b) disclose to the city or municipality management board all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the of the board or manager; and
- (c) seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the city or municipality.

(2) An accounting officer may not-

- (a) act in a way that is inconsistent with the duties assigned to accounting officers of cities and municipalities in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as, accounting officer for personal gain or to improperly benefit another

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person.

PART IX: FINANCIAL MANAGEMENT OF COUNTY PUBLIC ENTITIES

Financial governance of county public entities

County public entity
Bank accounts.

96. (1) A county public entity can only open and operate bank accounts which are in the name of the entity and with the approval of the entity's board of directors.

(2) All money received by a county public entity shall be paid into its bank account or accounts, which shall be done promptly and in accordance with any requirements that may be prescribed.

(3) A county public entity shall not open a bank account abroad or with an institution not registered as a bank in accordance with the laws of Kenya.

(4) Money may be withdrawn from a county public entity's bank account only in accordance with requirements that may be prescribed.

(5) The accounting officer of a county public entity-

- (a) shall administer all the entity's bank accounts;
- (b) is accountable to the board of directors of the entity for the entity's bank accounts; and
- (c) shall enforce any requirements that may be prescribed under this Act.

County public entity
Bank account details to
be submitted to county
treasury.

97. (1) The accounting officer of a county public entity shall submit to the entity's parent county treasury, in writing-

- (a) within 90 days after the entity has opened a new bank account, the name of the bank where the account has been opened, and the type and number of the account; and
- (b) annually before the start of a financial year, the name of each bank where the entity holds a bank account, and the type and number of each account.

(2) The accounting officer of the parent county government of a county public entity, or if there are more than one parent county government, any one of the accounting officers of those county governments as may be agreed between them, shall upon receipt of

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the information referred to in subsection (1), submit that information to the county assembly and Auditor-General, in writing.

Budgets to be submitted to parent county government.

98. (1) The board of directors of a county public entity shall for each financial year submit a proposed budget for the entity to its parent county government not later than one hundred and fifty before the start of the entity's financial year or earlier if requested by the parent county government.

(2) The parent county government shall consider the proposed budget of the county public entity and assess the entity's priorities and objectives.

(3) If the parent county government makes any recommendations on the proposed budget, the board of directors of the entity shall consider those recommendations and, if necessary, submit a revised budget to the parent county government not later than 100 days before the start of the financial year.

(4) The Governor of the parent county government shall table the proposed budget of the county public entity before the county assembly together with the annual budget of the county government for the relevant year.

(5) The board of directors of a county public entity shall approve the budget of the county public entity not later than 30 days before the start of the financial year, taking into account any hearings or recommendations of the county assembly of the parent county government.

(6) The budget of a county public entity shall-

- (a) be balanced;
- (b) be consistent with any service delivery agreement or other agreement between the entity and the entity's parent county government;
- (c) be within the limits determined by the entity's parent county government, including any limits on tariffs, revenue, expenditure and borrowing;
- (d) include a medium term business plan for the entity that-
 - (i) sets key financial and non-financial performance objectives and measurement criteria as agreed with the parent county government;
 - (ii) is consistent with the budget and integrated development plan of the entity's parent county

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government;

- (iii) is consistent with any service delivery agreement or other agreement between the entity and the entity's parent county government; and
- (iv) reflects actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates; and
- (e) comply with the principles of financial management applicable to privatised and commercialised public entities, to the extent that such principles can reasonably be applied to the county public entity.

(7) The board of directors of a county public entity may, with the approval of the governor, revise the budget of the county public entity, but only for the following reasons,

- (a) to adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) to authorise expenditure of any additional allocations to the county public entity from its parent county government;
- (c) to authorise, within a prescribed framework, any unforeseeable and unavoidable expenditure approved by the county governor of the parent county public entity;
- (d) to authorise any other expenditure within a prescribed framework.

(8) Any projected allocation to a county public entity from its parent county government shall be provided for in the annual budget of the parent county government, and to the extent not so provided, the entity's budget shall be adjusted.

(9) A county public entity may incur expenditure only in accordance with its approved budget or an adjustments budget.

(10) The governor of a county government shall table before the County assembly the approved budget or adjusted budget and any adjustments budget of a county public entity as approved by its board of directors.

(11) A county public entity's approved budget or adjusted budget shall be made public in substantially the same way as

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the budget of a county government shall be made public.

(12) The accounting officer of a county public entity shall not later than fourteen working days after the end of each month submit to the accounting officer of the line department of the parent county government, a statement in the prescribed form on the state of the entity's budget reflecting the following particulars for that month and for the financial year up to the end of that month-

- (a) actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure;
- (d) actual capital expenditure;
- (e) the amount of any allocations received;
- (f) actual expenditure on those allocations, excluding expenditure on allocations exempted by the annual Division of Revenue Bill from compliance with this paragraph; and
- (g) where necessary, an explanation of-
 - (i) any material variances from the county public entity's projected revenue by source, and from the county government entity's expenditure projections;
 - (ii) any material variances from the service delivery agreement and the business plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the county public entity's approved budget.

(13) The statement shall include a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.

(14) The amounts reflected in the statement shall in each case be compared with the corresponding amounts budgeted for in the county public entity's approved budget.

(15) The statement to the accounting officer of the county government shall be in the format of a signed document and in both electronic and hard copy form or any other media

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prescribed in legislation.

Mid-year performance assessment by county public entity.

99. (1) The accounting officer of a county public entity shall by the 31st day of January of each year-

- (a) assess the performance of the entity during the first half of the financial year, taking into account-
 - (i) the monthly statements referred to in section 115 for the first half of the of the financial year and the targets set in the service delivery, business plan or other agreement with the entity's parent county government; and
 - (ii) the entity's annual report for the past year and progress on resolving problems identified in the annual report: and
- (b) submit a report on such assessment to-
 - (i) the board of directors of the entity; and
 - (ii) the parent county government of the entity.

(2) The report referred to in subsection (1) shall be made public.

Remuneration packages for chief executive and senior officers.

100. The parent county government of a county public entity shall-

- (a) determine the upper limits of the salary, allowances and other benefits of the chief executive officer and senior managers of the entity in line with the recommendations of the Salaries and Remuneration Commission established under Article 230 of the Constitution;
- (b) monitor and ensure that the county public entity reports to the county assembly on all expenditure incurred by that county public entity on directors and staff remuneration matters, and in a manner that discloses such expenditure for every type of expenditure namely-
 - (i) salaries and wages;
 - (ii) contributions for pensions and medical aid, travel, motor car, accommodation, subsistence and other allowances;
 - (iii) housing benefits and allowances;

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- (iv) overtime payments;
- (v) loans and advances; and
- (vi) any other type of benefit or allowance related to directors and staff.

Disposal of capital assets by county public entity. 101. (1) A county public entity may not transfer ownership as a result of a sale or other transaction or otherwise dispose of a capital asset needed to provide the minimum level of basic county government services.

(2) A county public entity may transfer ownership or otherwise dispose of a capital asset other than an asset contemplated in subsection (1), with the approval of the county government.

(3) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) shall be fair, equitable, transparent and competitive and consistent with the supply chain management policy of the county government and any other applicable legislation.

Financial year of county public entity. 102. The financial year of a county public entity is the same as that of a county government.

Audit of county public entity. 103. The Auditor-General shall audit the accounts, financial statements and financial management of each county public entity and submit a report to Parliament as provided for in Article 229 of the Constitution.

Accounting officers of county public entities

Chief executive officer to be accounting officer. 104. The chief executive officer of a county public entity appointed in accordance with the Devolved Government Act is the accounting officer of the entity.

County public entity accounting officer to act in best interest. 105. (1) The accounting officer of a county public entity shall-

- (a) exercise utmost care to ensure reasonable protection of the assets and records of the entity;
- (b) act with fidelity, honesty, integrity and in the best interest of the entity in managing the financial affairs of the entity in line with Chapter 6 of the Constitution and any applicable legislation.
- (c) disclose to the entity's parent county government and the entity's board of directors all material facts, including those reasonably discoverable, which in any

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way may influence the decisions or actions of the parent county government or the board of directors; and

- (d) seek, within the sphere of influence of that accounting officer, to prevent any prejudice to the financial interests of the parent county government or the county public entity.

(2) The accounting officer shall not-

- (a) act in a way that is inconsistent with the responsibilities assigned to accounting officers of county public entities in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as accounting officer, for personal gain or to improperly benefit another person.

(3) In performing all these functions the accounting officer shall be subject to the provisions of chapter 6 of the Constitution and any applicable legislation.

Financing of county public entities.

106. County public entities will finance their functions through-

- (a) budget allocations from the county government under which the county public entity falls;
- (b) charges for services rendered;
- (c) national government grants assigned through the county government budget;
- (d) lawful grants from other organisations;
- (e) loans guaranteed through the framework provided under the Intergovernmental Fiscal Relations Act;
- (f) loans from the County Infrastructure Development Fund; and
- (g) investment income.

County public entity financial management.

107. The accounting officer of a county public entity is responsible for the financial management of the entity, and shall for that purpose take all reasonable steps to ensure that-

- (a) the resources of the entity are used effectively, efficiently, economically and transparently;

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- (b) full and proper records of the financial affairs of the entity are kept;
- (c) the entity has and maintains effective, efficient and transparent systems-
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit complying with and operating in accordance with any prescribed norms and standards;
- (d) irregular and fruitless and wasteful expenditure and other losses are prevented;
- (e) expenditure is in accordance with the approved plans and budgets and operational policies of the entity; and
- (f) disciplinary or, when appropriate, criminal proceedings, are instituted against any official of the entity who has allegedly committed an act of financial misconduct or an offence under this Act.

County public entity management of Assets and liability.

108. (1) The accounting officer of a county public entity is responsible for the management of-

- (a) the assets of the entity, including the safeguarding and maintenance of those assets; and
- (b) the liabilities of the entity.

(2) The accounting officer shall take all reasonable steps to ensure that the entity has and maintains-

- (a) a management, accounting and information system that accounts for proper assets and liabilities of the management systems of the county public entity; and
- (b) a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

County public entity revenue management.

109. The accounting officer of a county public entity shall take all reasonable steps to ensure that -

- (a) the entity has and implements effective revenue collection systems to give effect to its budget;

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- (b) all revenue due to the entity is collected;
- (c) any funds collected by the entity on behalf of a county government-
 - (i) are transferred to that county government strictly in accordance with the agreement between the entity the county government; and
 - (ii) are not used for the purposes of the entity;
- (d) the county public entity has effective revenue collection systems consistent with those of the parent county government;
- (e) revenue due to the entity is calculated on a monthly basis;
- (f) accounts for service charges are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- (g) all money received is promptly deposited in accordance with this Act into the county public entity's bank accounts;
- (h) the county public entity has and maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (i) the county public entity has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed;
- (j) all revenue received by the county public entity, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis; and
- (k) he or she immediately inform the parent county government of any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days.

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Management of county
public entity
Expenditure.

110. (1) The accounting officer of a county public entity is responsible for the management of expenditure of the county public entity.

(2) The accounting officer shall for the purpose of subsection (1) take all reasonable steps to ensure that—

- (a) the county public entity has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) the county public entity has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred:
 - (ii) accounts for creditors of the county public entity; and
 - (iii) accounts for payments made by the county public entity.
- (c) the county public entity has and maintains a system of internal control in respect of creditors and payments;
- (d) payments by the county public entity are made-
 - (i) directly to the person to whom it is due unless authorized by the creditor in writing for the payment to be made to a third party with reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only and only up to a prescribed limit;
- (e) all money owing by the county public entity be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) the county public entity makes all the remittances of taxes, levy, duty, pension, medical insurance, audit fees and other statutory commitments;
- (g) any dispute concerning payments due by the county public entity to another organ of state is disposed of in terms of the provisions of the Constitution dealing with intergovernmental disputes and the Intergovernmental

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Relations Framework Act;

- (h) the county's working capital is managed effectively and economically in terms of the prescribed cash management and investment framework;
- (i) the county public entity's supply chain management policy is implemented in a way that is fair, equitable, transparent, competitive, cost-effective and gives value for money in line with Article 227 of the Constitution and any applicable legislation;
- (j) all financial accounts of the county public entity are closed at the end of each month and reconciled with its records.

Budget implementation
by county public entity.

111. (1) The accounting officer of a county public entity is responsible for implementing the county public entity's approved budget, including taking all reasonable steps to ensure-

- (a) that the spending of funds is in accordance with the budget and is reduced as necessary where revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan; and
- (b) that revenue and expenditure are properly monitored.

(2) When necessary, the accounting officer shall prepare adjustments of budget and submit it to the county executive committee for consideration and tabling before the county assembly.

(3) The accounting officer shall no later than 14 days after the approval of an annual budget submit to the executive committee-

- (a) a draft service delivery and budget implementation plan for the budget year;
- (b) drafts of the annual performance contracts for the chief executive officer and other senior managers

Reports and reportable matters

Report of under-
collection, shortfalls etc.
by county public entity

112. (1) The accounting officer of a county public entity shall report, in writing, to the board of directors of the entity, at its next meeting, and to the accounting officer of the entity's parent county government any financial problems of the entity, including-

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- (a) any impending or actual-
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue;
 - (iii) overspending of the entity's budget;
 - (iv) delay in the entity's payments to any creditors; or
 - (v) overdraft in any bank account of the entity for a period exceeding 21 days; and
- (b) any steps taken to rectify such financial problems.

(2) The accounting officer of a county public entity shall submit the report referred to in subsection (1) to the county assembly at its next meeting.

Irregular or fruitless and wasteful expenditure.

113. (1) On discovery of any irregular expenditure or any fruitless and wasteful expenditure, or any other expenditure that has no value for money, the board of directors of a county public entity shall promptly report, in writing, to the governor and the accounting officer of the entity's parent county government and the Auditor-General-

- (a) particulars of the expenditure ;and
- (b) any steps that have been taken-
 - (i) to recover the expenditure; and
 - (ii) to prevent a recurrence of the expenditure.

(2) The board of directors of a county public entity shall promptly report to the Kenya Police Service any-

- (a) irregular expenditure that may constitute a criminal offence: and
- (b) other losses suffered by the county public entity which resulted from suspected criminal conduct.

Improper interference.

114. (1) The accounting officer of a county public entity shall promptly report to the governor of the entity's parent county government any interference by a county assembly member outside that county assembly member's assigned duties, in-

- (a) the financial affairs of the county public entity; or
- (b) the responsibilities of the board of directors of the county public entity.

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(2) The governor shall on receipt of the report referred to in subsection (1), in turn report to the speaker of the county assembly for appropriate action.

General reporting obligations.

115. (1) The accounting officer of a county public entity-

- (a) is, except where otherwise provided in this Act, responsible for the submission by the entity of all reports, returns, notices and other information to the entity's parent county government, as may be required by this Act; and
- (b) shall submit to the accounting officer of the entity's parent county government and the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

(2) If the accounting officer of a county public entity is unable to comply with any of the responsibilities in terms of this Act, he or she shall promptly report the inability, together with reasons, to the county assembly of the entity's parent county government.

Other officials of county public entities

Duties of officials.

116. (1) Each official of a county public entity exercising financial management responsibilities shall take all reasonable steps within that official's area of responsibility to ensure-

- (a) that the system of financial management and internal control established for the entity is carried out diligently;
- (b) that the financial and other resources of the entity are utilised effectively efficiently, economically and transparently;
- (c) that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented;
- (d) that all revenue due to the entity is collected;
- (e) that the provisions of this Act to the extent applicable to that official including any delegations in terms of section 117, are complied with; and
- (f) that the assets and liabilities of the entity are maintained, safeguarded and managed effectively.

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(2) An official of a county public entity shall perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the entity.

Delegation of powers and duties.

117. (1) The accounting officer of a county public entity-

- (a) may delegate to an official of that entity-
 - (i) any of the powers or duties assigned or delegated to the accounting officer in terms of this Act; or
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and
- (b) shall regularly review delegations issued in terms of paragraph (a) and, if necessary, amend or withdraw any of those delegations.

(2) A delegation in terms of subsection (1)-

- (a) shall be in writing;
- (b) is subject to any limitations and conditions the accounting officer may impose;
- (c) may be either to a specific individual or to the holder of a specific post in the county government entity; and
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) An accounting officer may confirm, vary or revoke any decision taken by an official in consequence of a delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Competency levels of senior managers.

118. Accounting officers, senior managers, any chief financial officer and all other financial officers of a county public entity shall meet the prescribed financial management competency levels.

General

Borrowing of money by county public entity.

119. A county public entity may borrow money, but only in

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accordance with-

- (a) the entity's multi-year business plan referred to in this Act; and
- (b) the provisions of this Act to the extent that those provisions can be applied to a county public entity.

Financial problems of county public entity.

120. (1) If the county public entity experiences serious or persistent financial problems and the board of directors of the entity fails to act effectively, the parent county government shall either-

- (a) take appropriate steps in terms of its rights and powers over that entity, including its rights and powers in terms of any relevant service delivery or other agreement;
- (b) impose a financial recovery plan, which shall meet the same criteria set out in section 153 for a county government financial recovery plan; or
- (c) liquidate and disestablish the entity.

PART X: PROCUREMENT OF PUBLIC WORKS, GOODS AND SERVICES

Supply chain management

Supply chain management.

121 (1) Every county government, county public entity, city or municipality shall have and implement a supply chain management policy which gives effect to the provisions of this Part.

(2) The supply chain management policy of a county government or county public entity shall be fair, equitable, transparent, competitive and cost-effective, produce value for money and comply with a prescribed regulatory framework for county government supply chain management, which shall cover at least the following-

- (a) the range of supply chain management processes that county governments county public entities city and municipality may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a county government city, municipality or county public entity may or shall use a particular type of process;

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- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids; screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- (i) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
- (j) participation in the supply chain management system of persons who are not officials of the county government or county public entity;
- (k) the barring of persons from participating in tendering or other bidding processes, including persons-
 - (i) who were convicted for fraud or corruption during the past five years;
 - (ii) who wilfully neglected, reneged on or failed to comply with its government contract during the past five years; or whose tax matters are not cleared by the Kenya Revenue Authority;
- (l) measures for-
 - (i) combating fraud, corruption, favouritism and

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unfair and irregular practices in county government supply chain management; and

- (ii) promoting ethics of officials and other role players involved in county government city, municipality or county public entity supply chain management within the meaning of chapter six of the Constitution;
- (iii) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by county assembly members, executive committee member, city, municipal council members or county public officials, in contravention of this Act, the Constitution and any other legislation relating to such matters and the code of conduct for county assembly members;
- (m) the procurement of goods and services by county governments or county government agencies through contracts procured by other organs of state;
- (n) contract management and dispute settling procedures; and
- (o) the delegation of county government supply chain management powers and duties, including to officials.
- (p) providing for affirmative action in favour of persons, categories of persons or groups of persons previously disadvantaged within the meaning of Article 227 of the Constitution;

(3) The regulatory framework for county government supply chain management shall be fair, equitable, transparent, competitive and cost-effective.

Unsolicited bids.

122. (1) A county government city, municipality or county public entity is not obliged to consider an unsolicited bid received outside its normal bidding process.

(2) If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a county government city, municipality or county government

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entity is approved, the accounting officer of the county government or county public entity shall notify the governor in writing.

(3) The governor on receipt of the report referred to in subsection (2), shall report to the county assembly for appropriate action.

(4) Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity.

Implementation of
supply chain
management policy.

123. (1) The accounting officer of a county government city, municipality or county public entity shall-

- (a) implement the supply chain management policy of the county government or county public entity; and
- (b) take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

(2) No person may impede accounting officers from fulfilling their responsibility under this section.

Contracts management

124. (1) A contract or agreement procured through the supply chain management system of a county government city, municipality or county public entity shall-

- (a) be in writing;
- (b) stipulate the terms and conditions of the contract or agreement, which shall include provisions for-
 - (i) the termination of the contract or agreement in the case of non-performance or under-performance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement longer than three years; and
 - (iv) any other matters that may be prescribed.

(2) The accounting officer of a county government city, municipality or county public entity shall-

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- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the county government or county public entity is properly enforced;
- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
- (c) establish capacity in the administration of the county government, city, municipality or county public entity-
 - (i) to assist the accounting officer in carrying out the duties set out in paragraphs (a) and(b); and
 - (ii) to oversee the day-to-day management of the contract or agreement;
- (d) regularly report to the county assembly of the county government or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.

(3) A contract or agreement procured through the supply chain management policy of the county government, city, municipality or county public entity may be amended by the parties, but only after-

- (a) the reasons for the proposed amendment have been tabled in the county assembly; and
- (b) the public-
 - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
 - (ii) has been invited to submit representations to the county government city, municipality or county government entity.

Exclusion of county executive members

125. A county executive committee member shall not be a member of a county tender committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

Competency levels of officers involved in supply chain management.

126. (1) The accounting officer and other county public officials of a county, city, municipality or county public entity involved in the implementation of the supply chain management policy of the county, city, municipality or county public entity shall meet the prescribed

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competency levels.

(2) A county city, municipality and a county public entity shall for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

(3) The national treasury may assist counties and county government agencies in the training of officials referred to in subsection (1).

Public Private Partnerships

County public private partnerships.

127. (1) A county, city, municipality may enter into a public private partnership agreement, but only if the county can demonstrate that the agreement will-

- (a) provide value for money to the county;
- (b) be affordable for the county; and
- (c) transfer appropriate technical, operational and financial risk to the private party.

(2) A public-private partnership agreement shall comply with any prescribed regulatory framework for public-private partnerships.

(3) If the public private partnership involves the provision of a county city, municipality service, Part X of the Devolved Government Act on citizen participation shall also be complied with.

(4) Before a public-private partnership is concluded, the county city, municipality shall conduct a feasibility study that-

- (a) explains the strategic and operational benefits of the public-private partner-ship for the county city, municipality in terms of its objectives;
- (b) describes in specific terms-
 - (i) the nature of the private party's role in the public-private partnership;
 - (ii) the extent to which this role, both legally and by nature, can be performed by a private party;

PART XI: INTERNAL AUDIT

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Internal audit. 128. (1) Every county government shall establish an internal audit unit that shall report to an independent audit committee established under section 131.

(2) A county government may, with the approval of the county assembly, outsource the internal audit services to build the capacity of its internal audit unit.

(3) The internal audit unit shall be managed by a county internal auditor who shall—

- (a) meet the professional requirements of the board currently registering accountants in Kenya;
- (b) be vetted and meets all the qualities and criteria set in Chapter 6 of the Constitution.

Functions of internal auditor.

129. The county internal auditor shall —

- (a) prepare the quarterly internal audit programmes and submit them to the independent audit committee by the 10th day of the start of each quarter;
- (b) conduct regular and continuous internal audits of the financial transactions of the county government, , cities, municipalities, and county entities;
- (c) have unrestricted access to all establishments and financial records of the county government, cities, municipalities decentralised units and county public entities;
- (d) conduct regular systems audits of the county government including, cities municipalities, and county entities to ensure that operating systems are functioning effectively;
- (e) conduct risk based audits to provide reasonable assurance that risk management processes and structures are operational;
- (f) assist the county government, decentralised units, cities, municipalities and county public entities in developing appropriate risk management, control and governance

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frameworks;

- (g) conduct regular value for money performance audits geared towards economic, effective and efficient use of public resources and sound management of public expenditure;
- (h) conduct information technology supported audits, including payroll audits, with the view to enhancing internal controls in computerized environments;
- (i) review, analyse, and evaluate periodical budgetary performance reports prepared by the accounting officer of the county;
- (j) review and evaluate annual appropriation accounts, fund accounts and statements of assets and liabilities before they are submitted to Auditor General by the accounting officer;
- (k) verify and analyse periodical financial returns that are required to be submitted to the county government by the decentralised units, cities, municipalities, and county public entities;
- (l) carry out investigations or special audits on irregularities identified or reported and report on any wastage or misappropriation of public funds or resources;
- (m) conduct periodic public expenditure tracking surveys on specific programmes in different sectors to ascertain economic, effective and efficient utilization of resources and overall quality of public expenditure management;
- (n) carry out forensic audit where required and appropriate;
- (o) follow up outstanding audit issues to confirm whether corrective or remedial action is taken on reported audit findings and recommendations; and
- (p) prepare internal audit reports on a monthly basis by the

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15th of the month and submit the report to the independent audit committee.

Fiduciary responsibilities of internal auditor.

130. The county internal auditor shall-

- (a) demonstrate integrity in all aspects of the work;
- (b) be impartial in discharging all responsibilities;
- (c) apply knowledge, skills and experience to his or her work; and
- (d) safeguard the information they received in carrying out the duties.

Audit committee.

131. (1) Each county government shall have an audit committee that will oversee all matters of the county government including the cities, municipalities and the county public entities.

(2) An audit committee is an independent advisory body which shall –

- (a) advise the county assembly, and the executive committee of the county on matters relating to-
 - (i) internal financial control and internal audits;
 - (ii) risk management;
 - (iii) accounting policies;
 - (iv) the adequacy, reliability and accuracy of financial reporting and information;
 - (v) performance management;
 - (vi) effective governance;
 - (vii) compliance with this Act, and any other applicable legislation;
 - (viii) performance evaluation; and
 - (ix) any other issues referred to it by the county internal auditor;
- (b) review the annual financial statements to provide the county assembly with an authoritative and credible view of the financial position of the county, its efficiency and effectiveness and its overall level of compliance with this

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Act, and any other applicable legislation;

- (c) prepare and submit a report to the county assembly on any issues raised by the Auditor-General in the audit report; and
- (d) require the county internal auditor to carry out investigations into the financial affairs of the county, , cities and municipalities.

(3) In performing its functions, an audit committee shall-

- (a) access the financial records and other relevant information of the county government and its entities;
- (b) liaise with--
 - (i) the internal audit unit of the county; and
 - (ii) the person designated by the Auditor-General to audit the financial statements of the county and its entities.

(4) An audit committee shall-

- (a) consist of six persons with appropriate experience, three of whom shall be nominated by the professional bodies and citizens representatives and three from among officers of the county nominated by the governor;
- (b) be approved by the county assembly; and
- (c) meet as often as is required to perform its functions, but at least four times a year.

(5) The chairperson of the committee shall be a member nominated from outside the county government

(6)The audit committee shall-

- (a) demonstrate integrity in all aspects of the work;
- (b) be impartial in discharging all responsibilities;
- (c) safeguard the information they receive in carrying out their duties.

PART XII: FINANCIAL REPORTING AND AUDITING

Annual reports.

132. (1) Every County government, city, municipality and county public entity shall prepare an annual report for each financial year in accordance with this Part.

(2) The purpose of an annual report of a county government, city, municipality and county public entity is to -

- (a) provide a record of the activities of the county, city, municipality or a county public entity during the financial year to which the report relates;
- (b) provide a report on performance against the budget for that financial year: and
- (c) promote accountability to the public for the decisions made throughout the year .

(3) The annual report of a county government, city, municipality and county public entity shall include-

- (a) the annual financial statements as submitted to the Auditor-General in terms of this Act;
- (b) the Auditor-General's report in terms of this Act and Devolved Government Act.
- (c) the annual performance report in terms of the Devolved Government Act;
- (d) an assessment by respective accounting officers of
 - (i) any arrears on applicable taxes, service charges and other revenues; and
 - (ii) the performance against the measurable performance objectives and targets on revenue collection from each revenue source and for each vote in the approved budget.
- (e) particulars of any corrective action taken or to be taken in

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response to issues raised in the audit reports referred to in paragraph (b);

- (f) any explanations that may be necessary to clarify issues in connection with the financial statements;
- (g) any information as determined by County government;
- (h) any recommendations of the county government's audit committee: and
- (i) any other relevant information as may be prescribed by the county assembly.

Financial Statements

133. (1) Every county government, city, municipality and county public entity shall for each financial year prepare annual financial statements which-

- (a) fairly presents the state of affairs of its management of revenue, expenditure, assets and liabilities, business activities, financial results, and financial position as at the end of the financial year; and
- (b) discloses the information required in terms of this Act and any other applicable legislation

(2) A county government which has the exclusive control of a county public entity shall in addition to complying with subsection (1), prepare consolidated annual financial statements incorporating the annual financial statements of the county government and of such county public entity.

(3) Both annual financial statements and consolidated annual financial statements shall be prepared in accordance with generally recognised accounting practices.

Disclosures on allocations of revenue.

134. (1) The annual financial statements of a county government, city, municipality and county public entity shall disclose information on-

- (a) any allocations received from-
 - (i) national revenues or an organ of state in the national government;
 - (ii) county government in the case of city, municipality and county public entity;
 - (iii) another county government; or
 - (iv) any other state organ.

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- (b) any allocations made by the county government to-
 - (i) a city or municipality;
 - (ii) a county public entity;
 - (iii) another county government; or
 - (iv) any other state organ.
- (c) how any allocations referred to in paragraph (a) were spent the compliance with the conditions of any allocations made to the county government in terms of Articles 202,203 or 204 of the Constitution;
- (d) the reasons for any non-compliance with conditions referred to in paragraph (c); and
- (e) whether funds allocated under the County Allocation of Revenue Bill to the county government during the financial year were delayed or withheld, and the reasons for such delay or withholding.

(2) The annual financial statements of a city, municipality or county public entity shall disclose information on-

- (a) any allocations received by the entity from any county government or other organ of state;
- (b) any allocations made by the entity to a county government or other organ of state; and
- (c) any other information as may be prescribed.

Other disclosure requirements

135. The notes to the annual financial statements of a county government, city, municipal or county public entity shall include particulars of-

- (a) the salaries, allowances and benefits of public officials, board of directors county executive city or municipal council and county assembly members;
- (b) any arrears owed by individuals under subsection (1) (a), for rates, services or other debts and which at any time during the relevant financial year were outstanding for more than 90 days;
- (c) a summary of all investments at the end of the financial year;
- (d) particulars of contingent liabilities at the end of the financial year;

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- (e) any material losses recovered or written off;
- (f) particulars of any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a county government, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable; and
- (g) any criminal or disciplinary steps taken as a result of such losses or such unauthorized, irregular or fruitless and wasteful expenditures referred to under subsection (2).

Financial statements to be submitted to Auditor-General for auditing.

136. (1) The accounting officer of a county government, city, municipality or county public entity shall prepare –

- (a) the annual financial statements of the county government, within two months after the end of the financial year to which those statements relate for submission to the Auditor-General for auditing; and
- (b) consolidated annual financial statements within three months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General.

(2) Once the Auditor-General has submitted an audit report to the accounting officer, no person other than the Auditor-General may alter the audit report or the financial statements to which the audit report relates.

Monitoring compliance of city, municipality or entity.

137. The accounting officer of a county government shall-

- (a) monitor whether the accounting officer of any city, municipality or county public entity under the sole or shared control of the county government has complied with this Act;
- (b) establish the reasons for any non-compliance; and
- (c) within fourteen days report any non-compliance, together with the reasons for such non-compliance, to the county assembly

Oversight reports.

138. (1) The county assembly shall consider the annual reports of the county government, city, municipality or county public entity within the county and adopt an oversight report containing the county assembly's comments on the annual report not later than two months

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from the date on which the annual report was tabled in the county assembly

(2) The comments of the county assembly referred to in subsection (1) shall include details on whether the county assembly has -

- (a) approved the annual report with or without reservations;
- (b) rejected the annual report; or
- (c) referred the annual report back for revision.

(3) The accounting officer, on being summoned, shall attend county assembly committee meetings where the annual report is discussed, for the purpose of responding to questions concerning the report.

(4) The accounting officer shall in accordance with Part VIII of Devolved Governments Act make public an oversight report referred to in subsection (1) within fourteen days of its adoption.

County assembly meetings discussing annual report to be open to the public.

139. The meetings of a county assembly at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, shall be open to the public and any organs of state, and a reasonable time shall be allowed-

- (a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and
- (b)** for members of the local community or any organs of state to address the Assembly committee.

Audit issues to be addressed.

140.(1) A county government, city, municipality or county public entity shall address any issues raised by the Auditor-General in an audit report .

(2) The governor of a county government shall ensure compliance with this subsection.

Failure to submit financial statements to the Auditor-General.

141. (1) If the accounting officer of a county government, city, municipality or county public entity fails to submit financial statements to the Auditor-General in accordance with section 136-

- (a) the governor shall within fourteen days provide to the county assembly a written explanation setting out the reasons for the failure;
- (b) the Auditor-General, in the case of any failure to submit financial statements for auditing, shall within fourteen

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days-

- (i) inform the governor and the Speaker of the county assembly,
 - (ii) issue a special report on the failure to the county assembly; and
- (c) the county assembly-
- (i) shall appoint a person to investigate the reasons for the failure referred to in paragraph(a) and report to the county assembly;
 - (ii) shall take appropriate steps to ensure that the financial statements are submitted to the Auditor-General or that the annual report, including the financial statements and the audit report on those statements, is tabled in the county assembly, as the case may be; and
 - (iii) may order that disciplinary steps be taken against the accounting officer or other person responsible for the failure.

(2) The Auditor-General shall submit to Parliament and the respective county assemblies-

- (a) a list of county governments, cities, municipalities or county public entities which have failed to submit their financial statements to the Auditor-General in terms of this Act by the 31st October of each financial year; and
- (b) after submission under paragraph (a), at quarterly intervals, a list of county governments, cities, municipalities or county public entities , whose financial statements are still outstanding at the end of each quarter .

PART XIII: RESOLUTION OF OPERATIONAL AND FINANCIAL PROBLEMS

Identification of financial problems

Primary responsibility for resolving financial problems.

142. (1) The primary responsibility to avoid, identify and resolve financial problems in a county rests with the county government itself.

(2) A county shall meet its financial commitments.

(3) If a county encounters a serious financial problem or anticipates problems in meeting its financial commitments, it shall

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immediately-

- (a) seek solutions for the problem;
- (b) notify the Cabinet Secretary responsible for devolved governments and the Cabinet Secretary responsible for finance; and
- (c) notify the organization of county governments if any

National Government Interventions

National government interventions.

143. (1) If the Cabinet Secretary responsible for devolved government becomes aware that there is a serious financial problem in a county, the Cabinet Secretary shall promptly-

- (a) consult the governor of the county to determine the facts;
- (b) assess the seriousness of the situation and the county's response to the situation; and
- (c) in consultation with the Cabinet Secretary responsible for finance, determine whether the situation justifies or requires an intervention in terms of Article 190 or Article 225 of the Constitution.

(2) If the financial problem has been caused by or resulted in a failure by the county to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of Article 190 (3) of the Constitution are met, the Cabinet Secretary shall promptly decide whether or not to intervene in the county.

(3) If the Cabinet Secretary decides to intervene, section 158 applies.

(4) If the county has failed to approve a budget or any revenue-raising measures necessary to give effect to the budget, as a result of which the conditions for an intervention in terms of Article 190(3) of the Constitution are met, Cabinet Secretary responsible for county governments shall intervene in the county in accordance with the provisions of this Act.

(5) If the county, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, as a result of which the conditions for an intervention in terms of Article 190 of the Constitution are met, the Cabinet Secretary responsible for county

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governments shall intervene under this section

Assessment for the need for national government interventions.

144. (1) If the conditions for national intervention in a county in terms of Article 190(3) of the Constitution are met and the Cabinet Secretary responsible for devolved government decides in terms of this Act to intervene in the county, the Cabinet Secretary responsible for devolved government after consulting the Cabinet Secretary responsible for finance may take any appropriate steps referred to in this section including-

- (a) assessing the seriousness of the financial problem in the county;
- (b) seeking solutions to resolve the financial problem in a way that would be sustainable and would build the county's capacity to manage its own financial affairs;
- (c) determining whether the financial problem, singly or in combination with other problems, is sufficiently serious to warrant intervention and whether the county would benefit from a financial recovery plan.
- (d) consulting the governor of the county to obtain the county government's co-operation in resolving the financial problem, and if applicable implementing the financial recovery plan.

(2) If conditions referred to in subsection (1) (c) apply the Cabinet Secretary responsible for devolved government may request any suitably qualified person or firm-

- (i) to prepare an appropriate financial recovery plan for the county;
- (ii) to recommend appropriate changes to the county's budget and revenue-raising measures that will give effect to the recovery plan; and
- (iii) to submit the recovery plan and any recommendations referred to in subparagraphs (i) and (ii) to the Cabinet Secretary responsible for devolved governments within a period determined by the Cabinet Secretary.

(3) The Cabinet Secretary responsible for devolved government shall submit to the county, the Controller of Budget and the Cabinet Secretary responsible for finance the details of information referred to in subsection (2).

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Criteria for determination of operational and financial problems.

145. When determining for the purposes of section 143 the seriousness of a financial problem, all relevant facts shall be considered, and the following factors, singly or in combination, may indicate a serious financial problem-

- (a) the county has failed to make payments as and when due;
- (b) the county has defaulted on contractual and financial obligations;
- (c) the actual current expenditure of the county has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive financial years;
- (d) the county had an operating deficit in excess of five per cent of revenue in the most recent financial year for which financial information is available;
- (e) the county has failed to make any other obligatory payments as and when due, which individually or in the aggregate is more than two per cent of the county's budgeted operating expenditure; or
- (f) existence of a recurring or continuous failure by a county to meet its financial commitments which substantially impair the county's ability to procure goods, services or credit on usual commercial terms,
- (g) the county is more than 60 days late in submitting its annual financial statements to the Auditor-General in accordance with this Act and Article 190 (4) of the Constitution; or
- (h) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the county, or has issued an opinion which identifies a serious financial problem in the county;

County Governments Financial Recovery Service

Establishment of the county Financial Recovery Service.

146. (1) The County Governments Financial Recovery Service is hereby established as an institution within the public service of the national government.

(2) The County Governments Financial Recovery Service forms part of, and functions within, the national department for devolved governments.

Functions and powers of County Governments Financial Recovery

147. The County Governments Financial Recovery Service may -

- (a) on the request by the Cabinet Secretary responsible

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- Service.
- for devolved county governments, prepare a financial recovery plan for a county government or, with the approval of the Cabinet Secretary responsible for finance, instruct any suitably qualified person to prepare the plan in accordance with the directions of the Service;
- (b) on request by the Cabinet Secretary responsible for devolved government, monitor the implementation of any financial recovery plans that it has prepared, and may recommend such amendments and revisions as are appropriate;
 - (c) upon request by any county government that is experiencing operational and financial problems, assist the county government to identify the causes of, and potential solutions for the problems;
 - (d) with the approval of the principal secretary of the national department for devolved county government to obtain the services of any financial expert to perform any specific work for the service; and
 - (e) collect information on county financial problems and on best practices in resolving such problems.

Appointment of Head of the Recovery Service. 148. (1) The Cabinet Secretary responsible for devolved governments shall appoint a person as the Head of the Recovery Service, subject to the legislation governing the appointment of officers to serve in the national public service.

(2) A person appointed as the Head of the Recovery Service in the national Department for Devolved governments shall be appointed on terms and conditions set out in a written employment contract, which shall include terms and conditions setting performance standards.

Responsibilities of Head.

149. (1) The Head of the Recovery Service-

- (a) is responsible for the performance by the Service of its functions and the exercise of its powers; and
- (b) takes all decisions of the Service in the performance of its functions and the exercise of its powers, except those decisions of the Service taken in consequence of a delegation in terms of section 151.

(2) The Head of the Recovery Service performs the functions of office subject to the directions of the Principal Secretary responsible for

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devolved governments.

Staff of County
Financial Recovery
Service.

150. (1) The staff of the County Financial Recovery Service consists of-

- (a) the Head of the Recovery Service;
- (b) persons in the service of, or contracted by, the National Department for Devolved governments and designated by the Principal Secretary of the National Department for Devolved governments for the work of the Service; and
- (c) persons seconded from an organ of state or organisation to the Service by agreement between the Principal Secretary and that organ of state or organisation.

Delegation Head of the
Recovery Service.

151. (1) The Head of the Recovery Service may delegate, in writing, any of the powers or duties of the Service to a member of the staff of the Service.

(2) A delegation in terms of subsection (1)-

- (a) shall be in writing;
- (b) is subject to the limitations or conditions which the Head of the Recovery Service may impose; and
- (c) does not divest the Head of the Recovery Service of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The Head of the Recovery Service may confirm, vary or revoke any decision taken in consequence of a delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Cabinet secretary
directions to the county
financial recovery
service.

152. (1) If a county, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the Cabinet Secretary responsible for devolved governments shall promptly-

- (a) request the County Financial Recovery Service referred to in section 148-
 - (i) to determine the reasons for the crisis in its

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financial affairs;

- (ii) to assess the county's financial state;
 - (iii) to prepare an appropriate recovery plan for the county;
 - (iv) to recommend appropriate changes to the county's budget and revenue-raising measures that will give effect to the recovery plan; and
 - (v) to submit to the Cabinet Secretary responsible for devolved government and the Cabinet Secretary responsible for finance-
 - (i) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and
 - (ii) the recovery plan and recommendations made under subsections (iii) and (iv); and
- (b) consult the governor of a county to obtain the county government's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan.

(2) The Cabinet Secretary responsible for devolved government shall submit a copy of any request in terms of subsection (1)(a) and any determination and assessment received in terms of subparagraph (1)(a) (v) to the county and the Cabinet Secretary responsible for finance.

Financial recovery plans.

153. (1) The County Governments Financial Recovery Service or any suitably qualified person or firm may, on request by the Cabinet Secretary responsible for devolved government, prepare a financial recovery plan for a national intervention referred to in section 143.

(2) When preparing a financial recovery plan, the County Governments Financial Recovery Service or the person or firm referred to in subsection (1) shall-

- (a) consult the-
 - (i) relevant county government;
 - (ii) the county's principal suppliers and creditors, to the extent they can reasonably be contacted;
 - (iii) Cabinet Secretary responsible for devolved governments and the Cabinet Secretary responsible for finance; and

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- (iv) Council of County Governors;
- (b) take into account-
 - (i) any financial recovery plan that has previously been prepared for the county government; and
 - (ii) any proposed financial recovery plan, or proposals for a financial recovery plan, that may be advanced by the county government or any creditor of the county.

(3) The County Governments Financial Recovery Service or any suitably qualified person or firm referred in subsection (1) shall, at least 14 days before finalising the plan, submit the plan for comment to-

- (a) the county government;
- (b) Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance;
- (c) Council of County Governors;
- (d) organization for county government workers;
- (e) any supplier or creditor of the county on request; and
- (f) the public by publishing a notice in a newspaper of general circulation in the county, stating the place, including any website address, where copies of the plan will be available to the public free of charge or at a reasonable price; and inviting the local community to submit written comments in respect of the plan.

(4) The County Governments Financial Recovery Service or any suitably qualified person or firm charged with preparing the financial recovery plan shall-

- (a) consider any comments received pursuant to subsection (3);
- (b) finalise the financial recovery plan; and
- (c) submit the final plan to the Cabinet Secretary responsible for devolved governments for approval in terms of this Act.

Objective of recovery plans.

154. (1) A financial recovery plan prepared pursuant to section 153 shall be for the purpose of securing the county government's ability to meet its obligations, financial commitments and the provision of basic

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services;

(2) The plan referred to in subsection (153) shall -

- (a) identify the financial problems of the county;
- (b) be designed to place the county in a sound and sustainable financial condition as soon as possible;
- (c) state the principal strategic objectives of the plan, and ways and means for achieving those objectives;
- (d) set out a specific strategy for addressing the county's financial problems, including a strategy for reducing unnecessary expenditure and increasing the collection of revenue, as may be necessary;
- (e) identify the human and financial resources needed to assist in resolving financial problems, and where those resources are proposed to come from;
- (f) describe the anticipated time frame for financial recovery, and milestones to be achieved; and
- (g) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the county and actions to be taken by other parties;

(3) The plan referred to in subsection (1) may also provide for-

- (a) the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic county services;
- (b) debt restructuring or debt relief in accordance with Part XIII of this Act;
- (c) special measures to prevent unauthorised, irregular and fruitless and wasteful expenditures and other losses; and
- (d) the identification of any actual and potential revenue sources.

(4) In addition, a financial recovery plan shall-

- (a) set spending limits and revenue targets;
- (b) provide budget parameters which bind the county government for a specified period or until stated conditions have been met; and

identify specific revenue-raising measures that are necessary for financial recovery, including the rate at which any county tax, fees and tariffs shall be set to achieve financial recovery;

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Approval of recovery plans. 155.(1) The Cabinet Secretary responsible for devolved governments shall on receipt of a recovery plan referred to under section 153 verify that the process set out in section 144 has been followed and that the criteria contained in section 145 are met, and-

- (a) if so, approve the recovery plan; or
- (b) if not, direct what defects shall be rectified.

(2) The Cabinet Secretary responsible for devolved government shall submit an approved recovery plan to the-

- (a) relevant county government;
- (b) Senate;
- (c) Cabinet Secretary responsible for finance;
- (d) Controller of Budget;
- (e) Auditor-General; and
- (f) Council of County Governors.

Amendment of recovery plans. 156. (1) The Cabinet Secretary responsible for devolved government may at any time, but subject to section 158, request the County Governments Financial Recovery Service or any suitably qualified person or firm to prepare an amended financial recovery plan in accordance with the directions of the Cabinet Secretary.

(2) No amendment of a recovery plan may impede the implementation of any court order made or agreement reached in terms of the plan before the amendment.

Implementation of county recovery plans. 157. (1) On receipt of county financial recovery plan provided by Cabinet Secretary responsible for devolved government-

- (a) the county shall implement the approved recovery plan;
- (b) all revenue, expenditure and budget decisions shall be taken within the framework of, and subject to the limitations of, the recovery plan; and
- (c) the county shall report monthly to the Cabinet Secretary responsible for devolved government on the implementation of the plan in such manner as the plan may determine.

(2) The financial recovery plan binds the county government in the

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exercise of both its legislative and executive authority, including the approval of a budget and legislative measures giving effect to the budget, but only to the extent necessary to achieve the objectives of the recovery plan.

(3) The Cabinet Secretary responsible for devolved governments shall in terms of either Article 190 of the Constitution -

- (a) assume responsibility for the implementation of the recovery plan to the extent that the county executive committee cannot or does not take executive measures to give effect to the recovery plan;
- (b) make any other appropriate arrangements including appointment of a person to ensure that the county government functions are performed; or
- (c) approve a temporary budget and revenue-raising measures, and other measures to give effect to the recovery plan and to provide for the continued functioning of the county.

Review of
interventions.

158. (1) The Cabinet Secretary responsible for devolved government shall at least once in every three months-

- (a) review any national intervention referred to in section 143, 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) the relevant county government;
 - (ii) Senate;
 - (iii) Cabinet Secretary responsible for finance;
 - (iv) Controller of Budget;
 - (v) Auditor General; and
 - (vi) Council of County Governors

(2) The Cabinet Secretary responsible for devolved governments may request the County Governments Financial Recovery Service or the person or firm that prepared the recovery plan, to assist the Cabinet Secretary responsible for devolved government in complying with subsection (1).

Termination of
interventions.

159. (1) A national intervention referred to in section 143 shall end

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when-

- (a) the crisis in the county's operational and financial affairs has been resolved;
- (b) the county's ability to meet its obligations to provide basic services or its financial commitments is secured; and
- (c) the Senate resolves that the national intervention should end.

(2) When a national intervention ends, the Cabinet Secretary responsible for devolved government shall notify-

- (a) relevant county government;
- (b) Cabinet Secretary responsible for finance;
- (c) Controller of Budget;
- (d) Auditor General;
- (e) Council of County Governors;
- (f) Organisation of county government workers;
- (g) any creditors having pending litigation against the county government; and
- (h) Parliament.
- (i) Public through notices as provided under section 153 (3) (f).

Access to information,
records and documents.

160. If the national government intervenes in a county government in accordance with Article 190 of the Constitution and this Act, the national government and its representatives shall have access to such information, records and documents as may be necessary for the intervention including for purposes of identifying or resolving the operational and financial problems of the county.

Debt relief and restructuring

Legal rights

161. Except as expressly provided for in this Part, nothing in this Part limits or affects -

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- (a) the rights of any creditor or other person having a claim against a county;
- (b) any person's access to ordinary legal process in accordance with the common law and relevant legislation; or
- (c) the rights of parties to a contract with a county government, city, municipality or county public entity, to alternative dispute resolution mechanisms, other remedies, processes or procedures.

Application for stay of proceedings.

162. (1) If a county government is unable to meet its financial commitments it may apply to the High Court for an order to stay, for a period not exceeding 90 days all legal proceedings, including the execution of legal process, by persons claiming money from the county government or a county public entity under the sole control of the county.

(2) Notice of an application in terms of subsection (1) shall be given to-

- (a) the Cabinet Secretary responsible for devolved governments;
- (b) the Cabinet Secretary responsible for finance;
- (c) Controller of Budget
- (d) Council of County Governors; and
- (e) the extent that they can reasonably be contacted, all persons to whom the county government or, county public entity owes an amount in excess of a prescribed amount, or if no amount is prescribed, in excess of 1 million shillings.

PART XIV: FINANCIAL MISCONDUCT

Disciplinary proceedings

Financial misconduct by County officials.

163. (1) The accounting officer of a county commits an act of financial misconduct if that accounting officer deliberately or negligently-

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- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a county;
- (c) makes or permits, or instructs another official of the county to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of a requirement of this Act to be-
 - (i) submitted to the governor or the county assembly, or to the Auditor-General, the National Treasury or other organ of state; or
 - (ii) made to the public.

(2) The accounting officer of a county commits an act of financial misconduct if that officer deliberately or negligently-

- (a) fails to carry out a duty delegated to that officer in terms of this Act;
- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 9 or 17;
- (c) makes or permits, or instructs another official of the county to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(3) A county public officer or other official of a county exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 9, commits an act of financial misconduct if that official deliberately or negligently-

- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to

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the accounting officer for the purposes of a document referred to in subsection (1)(d).

(4) A county executive member shall-

- (a) investigate allegations of financial misconduct against the accounting officer, or any officer of the county unless those allegations are frivolous, vexatious, speculative or unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer or other county public officers in accordance with systems and procedures referred to in this Act.

Financial misconduct by officials of cities, municipalities or county public entities.

164. (1) The accounting officer or any other official of a city, municipality or county public entity commits an act of financial misconduct if that accounting officer deliberately or negligently-

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a city, municipality or county public entity;
- (c) makes or permits, or instructs another official of city, municipality or county public entity to make an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of this Act is to be-
 - (i) submitted to the entity's board of directors or parent county or to the Auditor-General; or
 - (ii) made to the public.

(2) The county executive committee shall investigate and institute disciplinary action where warranted in the case of officials of cities, municipalities or county public entities that fall under a county following the same procedures referred to in section 163 (4) (a) and (b)

Criminal proceedings

Offences.

165. (1) The accounting officer of a county, city, municipality or county public entity commits an offence if that officer-

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- (a) deliberately or in a grossly negligent way-
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) fails to take reasonable steps to implement the county's supply chain management policy referred to in Part X;
 - (iii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
 - (iv) fails to take all reasonable steps to prevent corruptive practices in the management of the county's assets or receipt of money or in the implementation of the county's supply chain management policy;
- (b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the county or on money received or spent by the county; or
- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act is to be -
 - (i) submitted to the Auditor-General, the National Treasury or any other organ of state; or
 - (ii) made to the public.

(2) A county assembly member commits an offence if that member-

- (a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the county to contravene a provision of this Act or to refrain from complying with a requirement of this Act;
- (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the county or delegated to the chief financial officer of the county in terms of this Act;
- (c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a city, municipality or county public entity under the sole or shared control of the county; or

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- (d) interferes in the management or operational activities of a county public entity under the sole or shared control of the county.

(3) A county assembly member, an official of a county, a city, a municipality, county public entity or a member of the board of directors of a county public entity or any other person commits an offence if that person deliberately or in a grossly negligent way-

- (a) impedes an accounting officer from complying with a provision of this Act;
- (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a county or county public entity;
- (c) makes a withdrawal in contravention of section 56;
- (c) contravenes a provision of this Act; or
- (d) provides false or misleading information for the purposes of any document which shall in terms of a requirement of this Act be-
- (i) submitted to the county assembly, governor or accounting officer of a county or to the Auditor-General or the National Treasury; or
- (ii) made public.

Penalties.

166. Unless the penalty is otherwise explicitly stated elsewhere in this Act, a person who commits an offence under this Act is liable to fines and penalties provided under the Anti- Corruption and Economic Crimes Act, 2003 and any other applicable law.

General

Regulations on financial misconduct procedures and criminal proceedings.

167. The Cabinet Secretary responsible for devolved government, acting in consultation with the County Public Service Board and the County Public Service Advisory Authority, may make regulations prescribing-

- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct shall be reported to the respective county executive, county assembly and the Auditor General, including-

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- (i) particulars of the alleged financial misconduct; and
- (ii) steps taken in connection with such financial misconduct;
- (b) matters relating to internal investigations by counties and county public entities of allegations of financial misconduct;
- (c) criminal charges be laid against a person for financial misconduct;
- (d) criteria for the composition and functioning of a disciplinary board which hears a charge of financial misconduct;
- (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board shall be reported to the Auditor-General; and
- (f) any other matters to the extent necessary to enforce the provisions of this Act.

PART XV: MISCELLANEOUS

Limitation of liability.

168. (1) No County government or any of its political structures, political office-bearers or officials, no county government entity or its board of directors or any of its directors or officials, and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith.

(2) Without limiting liability in terms of the common law or other legislation, a County government may recover from a political office-bearer or official of the County government, and a County government entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

Delays and exemptions from application of the Act.

169. (1) Parliament may by notice in the Gazette-

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the

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date when this section takes effect; or

- (b) where practicalities impede the strict application of a specific provision of this Act, exempt any county, city, municipality or county public entity, from such provision for a period and on conditions determined in the notice.

(2) A delay or exemption in terms of subsection (1) may generally apply or be limited in its application to particular counties, cities, municipalities and county public entities

Transitional provisions.

170. Anything done in terms of a provision of the Local Government Act repealed under the Devolved Government Act, which may otherwise be done in terms of a provision of this Act, shall be regarded as having been done in terms of this Act.

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SCHEDULE**COUNTY GOVERNMENTS BUDGET TIME TABLE**

	Time line	Activity
1.	1 st August	Budget council issuers budget guidelines
2.	31 st August	CRA makes recommendations to all levels of government on the vertical and horizontal division of revenue
3.	10 th September	Budget sector forums launched
4.	30 th September	Intergovernmental Budget Council consultations
5.	30 th September	Budget Council consults with Senate
6.	10 th October	Sector budget forum reports submitted
7.	31 st October	Publication of the Budget Outlook Paper
8.	30 th November	County governments submit loan applications to the Loans and Grants Council
9.	10 th January	Division of Revenue Bill and County Allocation of Revenue Bill are introduced in Parliament
10.	31 st January	Division of Revenue Bill and County Allocation of Revenue Bill approved by Parliament
11.	31 st January	Loans and Grants Council recommends requests for borrowing and guarantees by county to the national government for approval

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12.	10 th February	Requests for borrowing and guarantees by county governments approved
13.	28 th February	Budget Policy Statement submitted to Parliament
14.	30 th April	Appropriation Bills submitted to County assemblies
15.	20 th June	Appropriation Bills passed by County assemblies
16.	30 th June	Appropriation Bill accepted to by governors

MEMORANDUM OF OBJECTS AND REASONS

PART I: The object of the Bill is to provide for sound and sustainable management of the financial affairs of county governments, urban areas and cities as well as county public entities. County governments, urban areas, cities and county public entities are to be guided and bound by the principles of public finance set out under Article 201 of the Constitution (clause 4).

It is provided under clause 6 that in case of any inconsistency between the provisions of the Bill, and any other law, when it becomes an Act, the provisions of the Bill shall prevail as far as the fiscal and financial affairs of the county governments and their entities mentioned above are concerned.

PART II: Provides for the role of the governor in the financial management of the financial affairs of the county. This includes providing general political guidance over the financial affairs, oversight and coordination of the budgeting process in the county among others (clause 7). Under clause 8, the county executive committee also has a role to play through consideration of reports and statements, oversee in the implementation of the approved budget, issuing instructions to accounting officer and identifying financial problems facing the county among others

PART III: Provides for the establishment of the county treasury department and the role of the national treasury in the management of the financial affairs of county governments. It requires all officers in the treasury department to meet the competency levels prescribed for purposes of financial management. It also provides for accounting officers and gives powers to the Principal Secretary responsible for Finance, who is in charge of the budget and treasury department to delegate powers.

PART IV: This sets out the sources of revenues of the county government. These include intergovernmental transfers and the county's own sources of revenue including property tax, entertainment tax, fees and charges and royalties.

PART V: Provides for the planning and budgeting process to be undertaken by county governments. In this respect, the Part outlines the principles of planning and budgeting. Clause 47 sets out the

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content of the annual county budget and the documents to be included in the budget. The Part also states the consequences for failure to approve the budget and requires that the annual budget be published upon being tabled in the County assembly.

PART VI: Deals with the issue of borrowing by county governments. Clause 67 provides that a county government can borrow money in accordance with Article 212 of the Constitution and with the approval of the County assembly. Clause 75 establishes a county infrastructure development fund that shall offer long-term loans for the purpose of development of infrastructure and capital investments in the counties.

PART VII: Provides for the financial management in the county government. Clause 76 states the role of an accounting officer in the financial management of the county. The Part also spells out the financial management procedures to be followed in the counties and provides for reports and reportable matters.

PART VIII: Provides for the financial management of urban areas and cities. Clause 87 states that the manager of a city or a municipality is the accounting officer of that city or municipality for the purposes of the Act. The Part also stipulates that the accounting officer of a city or municipality is responsible for the management of the assets and liabilities of the city.

PART IX: Regulates the financial affairs of county public entities. Clause 96 requires county public entities to only open and operate bank accounts in the name of the entities and on the approval of the entity's board of directors. Clause 98 provides that a county public entity budget shall be balanced and be consistent with any service delivery agreement between the entity and the entity's parent county government. Clause 104 designates the chief executive officer of a county public entity as the accounting officer of the entity.

PART X: Deals with the procurement of public works, goods and services. Clause 121 provides that the supply chain management policy of a county government and a county public entity shall be fair, equitable, transparent, competitive and cost-effective. Clause 123 requires accounting officers to implement the supply chain management policy and further provides that no person may impede accounting officers from fulfilling their responsibilities under the Part. Clause 127 provides that a county may enter into a public-private partnership agreement if certain stipulated conditions are met.

PART XI: Provides for the internal audit function of the county governments. Clause 129 sets out the functions of the county internal auditor which include the preparation of quarterly internal audit programmes, conducting risk based audits and the review of periodical budgetary performance reports. Clause 131 provides that each county government shall have an audit committee, which is an independent advisory body. The functions of the audit committee include advising the county governments on matters of internal financial control, risk management and accounting policies.

PART XII: Sets out the financial reporting and auditing provisions. Clause 132 requires every county government and county public entity to prepare an annual report for each financial year. The purposes of the annual report include; providing a record of the activities of the public entity during

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the financial year, to promote accountability to the local community and to provide a report on performance against the budget of the county government.

PART XIII: Deals with resolution of financial problems in county governments. Clause 142 states that the primary responsibility to avoid, identify and resolve financial problems in a county rests with the county itself. Clause 143 provides the circumstances under which the Cabinet Secretary responsible for county governments may intervene in a county which is in a serious financial problem. This part provides the procedure for the intervention and when it should end.

Clause 145 sets out the criteria for determination of operational and financial problems. These factors include situations where the county has failed to make payments as and when due, where the county has defaulted on financial obligations for financial reasons and where the county has an operating deficit in excess of five per cent of the revenue of the most recent financial year. Clause 146 establishes the County Financial Recovery Service as an institution within the public service of the national government. The functions and powers of the Service include the preparation of financial recovery plans for county governments, monitoring the implementation of financial recovery plans and assisting the county governments in identifying the causes of and solutions to county financial problems.

PART XIV: Provides for the financial misconduct of county government and county public entity officials and creates the offences and the requisite penalties for contravention is spelt in Clauses 165 and 166.

PART XV: Sets out miscellaneous provisions including limitation of liability for acts committed in good faith by county government and county public entity officials.

The enactment of this Bill shall occasion additional expenditure of public funds, to be provided for in the estimates.

Dated the.....2011.

MUSALIA MUDAVADI,

Deputy Prime Minister and Minister for Local Government.