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THE PUBLIC FINANCIAL MANAGEMENT BILL, 2011

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FIRST SCHEDULE - CONSEQUENTIAL AMENDMENTS

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A Bill for

AN ACT of Parliament to provide for management of the public finances of the Republic of Kenya by the National Government and by County Governments in a manner that is responsible, transparent and accountable

ENACTED by the Parliament of Kenya, as follows—

PART I - PRELIMINARY

- Short title. **1.** This Act may be cited as the Public Financial Management Act, 2011.
- Commencement. **2.** This Act shall come into operation on the day on which it is published in the Gazette.
- Interpretation. **3.** (1) In this Act, unless the context otherwise requires—
- “accounting officer” means—
- (a) a person designated as an accounting officer under section 16;
- (b) in the case of the Judiciary, the Chief Registrar of the Judiciary; and
- (c) in the case of the Parliamentary Service Commission, the Clerk of the National Assembly and the Clerk of the Senate jointly;
- “appropriation” means any authority of Parliament or a County Assembly to pay money out of the Consolidated Fund or a County Revenue Fund, respectively, or out of any other public fund;

“budget policy statement “ in relation to a financial year means the budget policy statement of the National Government referred to in section 24;

“commitment” means entering into a contract or other binding arrangement that creates future expenses or liabilities;

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

“County Government” means a County Government as established by Article 176 of the Constitution and includes entities of a County Government;

“County Revenue bank account” means the bank account referred to in section 65;

“County Secretary responsible for finance” means the member of a county executive committee who is responsible for finance and the County Treasury;

“County Treasury” means the County Government entity established under section 13;

“development expenditure” means an expenditure for the creation or renewal of assets;

“entity” means any office, organ or other entity comprising the State as defined in Article 260 of the Constitution, including—

- (a) State organs as defined in that Article; and
- (b) state corporations, except for state corporations that operate as commercial enterprises or

whose operations are not funded by the government;

“exchequer account” means the bank account referred to in section 62;

“fiscal responsibility principles” means the principles of fiscal responsibility set out in section 23;

“financial objectives” means the financial objectives set out in a budget policy statement or in a fiscal strategy paper, according to the context;

“financial year” means the period from the 1st July in any year to the 30th June in the immediately succeeding year, both days inclusive;

“fiscal strategy paper “ in relation to a financial year means the fiscal strategy paper referred to in section 29;

“government” means the National Government and the County Government;

“medium term” means a period of three to five years;

“National Government” means the government of the Republic of Kenya and includes its entities, but excludes County Governments and their entities;

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

“public money”

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

generate liability for the government;

“publicise”, in relation to a document, means to make known to the public by way of announcements in the national or local media that indicate in general terms the nature of the document and how and where it has been published and may be accessed by the public;

“publish, in relation to a document, means—

- (a) to publish the document in a newspaper or other publication that is available for inspection or at public libraries or government departments, nationally or locally; or
- (b) to post the document on the internet on a government website in a form that is easily accessible to users of the internet.

“receiver of revenue” means a person appointed as a receiver of revenue under section 19;

“recurrent expenditure” means that expenditure which relates to the costs of running the services and activities of the government and not for the creation or renewal of assets;

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

“Vote” means a group of appropriations in budget estimates.

(2) Terms used in this Act that are also defined in Article 260 of the Constitution or used in the Constitution shall have the same meaning as those terms have in the Constitution.

(3) Terms used in this Act that have a meaning within the accounting profession are to be given the meaning that they have in the accounting profession in Kenya and in generally accepted accounting principles.

Order designating an entity.

4.(1) The Cabinet Secretary responsible for finance may make a determination as to whether a particular body or organisation is or is not an entity of the National Government or of a County Government within the meaning of this Act.

(2) If the Cabinet Secretary responsible for finance determines that a body or organisation is a government entity, he or she may make an order designating that body or organisation to be an entity of the National Government or of a County Government within the meaning of this Act.

PART II – ORGANISATION

Budget Committee of National Assembly

Functions.

5.(1) The departmental committee of the National Assembly that is responsible for public finance (in this section referred to as the “budget committee”) shall—

- (a) review the budget policy statement and budget estimates and make recommendations to the National Assembly;
- (b) provide general direction and impetus in the realisation of the provisions of this Act;
- (c) study all economic and budgetary matters falling within the competence of the National Assembly and make recommendations on these matters to the National Assembly;
- (d) study or consider any specific matter referred to it by the National Assembly and make

recommendations on the matter to the National Assembly;

- (e) ensure adherence by the Cabinet Secretary responsible for finance and the National Government to the fiscal responsibility principles; and
- (f) examine the various reports submitted to the National Assembly under Part VI of this Act and report to the National Assembly on what improvements of form or substance, if any, should be made to those reports.

(2) In the performance of its functions under this section, the budget committee shall be assisted by the Parliamentary Budget Office, which shall also serve as its secretariat.

Parliamentary Budget Office

Establishment.

6.(1) Pursuant to Article 127(6)(b) of the Constitution, the Parliamentary Service Commission shall constitute an office in the parliamentary service to be known as the Parliamentary Budget Office.

(2) The Parliamentary Budget Office shall consist of persons appointed by the Parliamentary Service Commission on merit by virtue of their expertise in financial, economic and public policy matters.

Functions.

7. The functions of the Parliamentary Budget Office include—

- (a) providing budget related information to the budget committee and other committees of Parliament;
- (b) providing service to the budget committee and other committees of Parliament;

- (c) preparing reports on budgetary projections and economic forecasts and, as appropriate, proposing alternatives;
- (d) preparing analyses of specific subjects, including financial risks posed by government policies and activities;
- (e) studying budget proposals and economic trends and making recommends with regard to the same;
- (f) establishing and fostering relationships with the National Treasury and with other national and international organisations, with an interest in budgetary and economic matters as it deems fit for the efficient and effective discharge of its functions;
- (g) undertaking, independently or in collaboration with any person or institution, any study or activity likely to assist the Parliamentary Budget Office in carrying out its functions;
- (h) ensuring that all reports and other documents produced by the Parliamentary Budget Office are presented in a readily intelligible, user-friendly form and are made available on the internet; and
- (l) reporting to the relevant committees of Parliament on the economic and financial impacts of every Bill that is submitted to Parliament, making reference to the fiscal responsibility principles and to the financial objectives set out in the relevant budget policy statement.

Cabinet Secretaries

Cabinet Secretary responsible for finance.

8. The Cabinet Secretary responsible for finance has the management and direction of the Department of Finance and the supervision, control and direction of all matters relating to the financial affairs of Kenya, in addition to functions that are assigned to the Cabinet Secretary responsible for finance under the Constitution..

Cabinet Secretaries generally

9.(1) Cabinet Secretaries, including the Cabinet Secretary responsible for finance, are responsible for

(a) policy formulation and financial management in respect of the entities of the National Government for which they have been assigned responsibility; and

(b) ensuring compliance by those entities with the provisions of the Constitution, this Act and other Acts relating to the management of public finances and assets.

(2) Where funds are provided to a County Government under appropriations that a Cabinet Secretary is responsible for, the Cabinet Secretary shall ensure that arrangements are made with the County Government to provide accountability for the use of the funds and for the delivery of the services for which the funds are provided.

(3) Arrangements referred to in subsection (2) shall be consistent with any directives provided by the National Treasury regarding such arrangements

National Treasury

Establishment and overall responsibilities.

10.(1) There is established an entity of the National Government to be known as the National Treasury.

(2) The National Treasury is responsible for the development and management of macro-economic policy and overall financial policy for the Republic.

(3) Except for matters that are assigned to another entity by the Constitution or any Act, the National

Treasury has overall responsibility for management, supervision, control and direction of all matters relating to public finances in the National and County Governments, including—

- (a) management of public revenue and public debt;
- (b) management and control of public expenditure;
- (c) promotion of economic and financial policies that facilitate social and economic development; and
- (d) promotion of transparency, effective management and accountability with regard to public finances.

Functions.

11.(1) The functions of the National Treasury include—

- (a) prescribing accounting standards and policies that are in line with generally accepted accounting principles;
- (b) developing the content, structure and format of reporting frameworks and accounting and financial guidelines;
- (c) enforcing proper management and control of, and accounting for, public finances in order to promote efficient and effective utilisation of budgetary resources;
- (d) maintaining proper books of account, and reporting in respect of, the Consolidated Fund, the Equalisation Fund and the Contingencies Fund and other public funds at the national level;
- (e) establishing appropriate banking arrangements and cash management for all levels of government and their entities;

- (f) coordinating the preparation of annual appropriation accounts and other statutory financial reports;
- (g) consolidating the annual appropriation accounts and other financial statements;
- (h) formulating and implementing economic and financial policies in coordination with other government entities;
- (i) mobilising domestic and external resources for financing government budgetary requirements;
- (j) managing the public debt;
- (k) preparing annual estimates of revenue of the National Government;
- (l) coordinating the preparation and consolidation of annual estimates of expenditure of the National Government;
- (m) coordinating the implementation of the budget of the National Government;
- (n) formulating and implementing policies relating to public procurement of goods and services and disposal of assets;
- (o) coordinating the management of public enterprises and investments;
- (p) developing requirements and procedures, and prescribing regulations, for the establishment and management of public funds;
- (q) coordinating financial relations between the National Government and County

Governments;

- (r) developing, monitoring and evaluating risk management strategies and governance structures;
- (s) establishing internal audit procedures and committees;
- (t) monitoring the financial and non-financial performance of state corporations;
- (u) reporting regularly with regard to budget implementation;
- (v) issuing directives, circulars or instructions with regard to financial matters; and
- (w) taking any other action to further the implementation of this Act.

Powers.

12. For the purposes of carrying out its functions, the National Treasury, through any of its officers authorised by it in that behalf, has the power to—

- (a) investigate any system of public financial management and internal controls in any government entity;
- (b) take appropriate steps, including the withholding of funds, to deal with any failure by a government entity to comply with the provisions of this Act;
- (c) have access to the offices of all levels of government and access to all their books, records, returns, reports and other documents, including electronic documents, relating to financial matters;
- (d) have access to any property of the National Government; and
- (e) require any public officer to provide explanations, information and assistance with regard to matters concerning public finances.

County Treasury

Establishment.

13. There shall be established in each county an entity of the County Government to be known as the County Treasury.

Functions.

14. The functions of a County Treasury include—

- (a) preparing the annual budget for the county, including coordinating the preparation of estimates of revenue and expenditure of the County Government;
- (b) enforcing proper management and control of, and accounting for, public finances in order

- to promote efficient and effective utilisation of budgetary resources;
- (c) maintaining proper records and books of accounts, and reporting, in respect of, the County Revenue Fund and other public funds at the county level;
 - (d) consolidating the annual appropriation accounts and other financial statements of the County Government in a format determined by the National Treasury;
 - (e) formulating and implementation of financial and economic policies in association with the National Treasury;
 - (f) mobilising resources for funding the budgetary requirements of the County Government;
 - (g) managing public debt at the county level;
 - (h) coordinating the implementation of the budget of the County Government;
 - (i) acting as custodian of County Government assets;
 - (j) assisting the County Government to build their capacity for efficient, effective and transparent financial management;
 - (k) providing the National Treasury with any information it may require to fulfil its functions under this Act;
 - (l) issuing directives, circulars and instructions with regard to financial matters at the County Government level; and

(m) taking any other action to further the implementation of the provisions of this Act at the County Government level.

Powers

15. For the purposes of carrying out its functions, a County Treasury, through any of its officers authorised by it in that behalf, has power to—

- (a) investigate any system of public financial management and internal controls in the County Government;
- (b) take appropriate steps, including the withholding of funds, to deal with any failure by any entity of the County Government to comply with the provisions of this Act; and
- (c) have access to the offices of County Government entities and access to all their books, records, returns, reports and other documents, including electronic documents, relating to financial matters;
- (d) have access to any property of the County Government; and
- (e) require County Government entities to comply with any applicable norms or standards regarding accounting practices and budget classification systems.

Accounting Officers

Designation.

16. (1) The Cabinet Secretary responsible for finance shall designate persons, to be known as accounting officers, who are responsible for accounting in respect of such National Government entities as the Cabinet

Secretary responsible for finance may specify.

(2) The County Secretary responsible for finance for a county shall designate persons, to be known as accounting officers, who are responsible for management of finances in respect of such County Government entities as the County Secretary responsible for finance may specify.

(3) The Cabinet Secretary responsible for finance and the County Secretaries responsible for finance shall ensure that every National Government entity and every County Government entity, respectively, has an accounting officer designated for it.

Responsibilities.

17.(1) Accounting officers are responsible to the Cabinet Secretary responsible for finance and the relevant County Secretary responsible for finance, as the case may be, for ensuring that the resources of the entity for which they have been designated are used in a way that is—

- (a) lawful and authorised; and
- (b) effective, efficient, economical and transparent.

(2) In carrying out their responsibilities under subsection (1), an accounting officer shall, in respect of each entity for which he or she is responsible—

- (a) ensure that all expenditure made by the entity is in accordance with subsection (1);
- (b) ensure that proper financial and accounting records are kept;
- (c) ensure that any financial and accounting records kept in electronic format are adequately protected and adequately backed up;
- (d) ensure that adequate arrangements are made for the management of assets and liabilities;
- (e) ensure that all contracts are within the law and

complied with;

- (f) ensure that all applicable procedures are followed in the acquisition or disposal of goods and services and that adequate arrangements are made for their custody, safe guarding and maintenance;
- (g) bring any concerns that the accounting officer has that a proposed decision or policy of an entity for which he or she is responsible may result in resources being used in a way that is contrary to subsection (1) to the attention of the Cabinet Secretary, or member of the county executive committee, as the case may be, who is responsible for that entity; and, if the concerns are not adequately addressed, the accounting officer shall bring those concerns to the attention of the Cabinet Secretary responsible for finance or County Secretary responsible for finance, as the case may be, and to the Controller of Budget, the Auditor-General and the National Treasury or relevant County Treasury.
- (h) prepare and submit estimates of expenditure to the Cabinet Secretary responsible for finance or to the County Secretary responsible for finance, as the case may be;
- (i) within three months after the end of a financial year, prepare annual accounts and other financial statements for that financial year to the Auditor-General for audit, with a copy to the National Treasury or the County Treasury, as the case may be; and
- (j) perform such other duties as may be directed by the Cabinet Secretary responsible for finance or by the County Secretary responsible for finance, as the case may be.

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

National Assembly with regard to a report submitted by the Controller of Budget under Article 228(6) of the Constitution, an accounting officer shall, in respect of each entity for which he or she is responsible—

- (a) prepare a report on action taken by the entity to implement any recommendations made in the committee's report as adopted by the National Assembly or the County Assembly, as the case maybe; and
- (b) submit the report to the National Assembly and, in the case of a County Government entity, to the County Assembly as well.

Disciplining public officers and accounting officers.

18.(1) If an accounting officer becomes aware that a public officer in an entity for which the accounting officer is responsible has done something improper, within the meaning of subsection (3), in relation to the resources of the entity, the accounting officer shall—

- (a) take appropriate steps to discipline the public officer; or
- (b) refer the matter to an appropriate disciplinary body to take appropriate action.

(2) If the Cabinet Secretary responsible for finance or the County Secretary responsible for finance, as the case may be, becomes aware that an accounting officer has done something improper, within the meaning of subsection (3), the Cabinet Secretary or County Secretary shall—

- (a) take appropriate steps with respect to the accounting officer's designation as an accounting officer, which may include revoking that designation; and

(b) refer the matter to an appropriate disciplinary body to consider taking disciplinary action against the accounting officer.

(3) For the purposes of this section, a public officer or an accounting officer does something improper if the public officer—

(a) fails to comply with any written law or with any directives issued by the National Treasury or the County Treasury;

(b) undermines any financial management procedures or controls; or

(c) makes or permits an expenditure that is unlawful or unauthorised.

Receivers and Collectors of Revenue

Receiver of revenue.

19. (1) The Cabinet Secretary responsible for finance, at the national level, and a County Secretary responsible for finance, at the county level, shall appoint persons, to be known as receivers of revenue, to be responsible for receiving and accounting for such government revenue as the Cabinet Secretary responsible for finance or the County Secretary responsible for finance may specify.

(2) A receiver of revenue is responsible to the Cabinet Secretary responsible for finance or the County Secretary responsible for finance, as the case may be, to ensure that the revenue for which the receiver of revenue is responsible is collected, received and accounted for.

(3) In carrying out his or her responsibilities under subsection (1), a receiver of revenue shall prepare an account of revenue received and revenue outstanding for each financial year and submit it to the Auditor-General within three months after the end of the financial year.

Collector of
revenue

20.(1) A receiver of revenue may authorise any public officer to be a collector of revenue for the purpose of collecting government revenue and remitting it to the receiver.

(2) Any other public officer, other than a receiver of revenue or a collector of revenue, who collects government revenue shall give the revenue to a receiver of revenue or a collector within three days after receiving it.

Kenya Revenue
Authority.

21. The Kenya Revenue Authority is, in respect of the revenue that it is authorised to collect under the Kenya Revenue Authority Act, a collector for the purposes of this Act.

Public Officers

Obligations

22. (1) In performing their functions under this Act, public officers shall comply with Article 232 of the constitution.

(2) In addition, public officers shall—

- (a) comply with the provisions of this Act and any directives issued by the National Treasury and the County Treasury, as the case may be;
- (b) ensure that the resources within their area of responsibility are used in a way that is—
 - (i) lawful and authorised, and
 - (ii) effective, efficient, economical and transparent;
- (c) ensure that, within their area of responsibility, adequate arrangements are made for the custody, safeguarding and maintenance of public property; and

- (d) use their best efforts, within their area of responsibility, to prevent any prejudice to the financial interests of the government.

PART III- FISCAL RESPONSIBILITY

Fiscal responsibility principles

Principles.

23. (1) In addition to the principles of public finance set out in Article 201 of the Constitution, the National Government and the County Governments, in the management of public finances, shall observe the following principles of fiscal responsibility—

- (a) maintaining public debt at levels that are sustainable;
- (b) ensuring that over the medium term, total operating expenses do not exceed total operating revenues;
- (c) ensuring that over the medium term, borrowing is only for the purpose of development spending and not for the purpose of funding recurrent spending;
- (d) ensuring that expenditure on wages and benefits for public officers is not excessive in relation to the size of the economy;
- (e) managing fiscal risks prudently; and
- (f) ensuring a reasonable degree of predictability with regard to the level of tax rates and tax bases, taking into account any tax reforms that may be made in the future.

(2) For the purposes of subsection (1)(c), “borrowing” does not include short term borrowing in the normal course of management of cash flow.

(3) Every County Government shall ensure that its level of debt at any particular time does not exceed a prescribed percentage of its annual revenue for the most recent financial year for which audited accounts are available. The percentage prescribed may be the same for all County Governments or different percentages may be prescribed for all or any of them.

National Government

Budget policy statement.

24.(1) The National Treasury shall prepare and submit to Parliament, by the 28th February each year, a budget policy statement in respect of the National and County Governments.

(2) The budget policy statement shall set out the broad strategic priorities and policy goals that will guide the National and County Government in preparing their budgets for the coming financial year, and over the medium term. The statement shall include—

- (a) an assessment of the current state of the economy and the projected state of the economy over the medium term, including macro-economic forecasts; and
- (b) the financial outlook with regard to government revenues, expenditures and borrowing for the coming financial year and over the medium term.

(3) In preparing the budget policy statement, the National Treasury shall—

- (a) consult with the Commission on Revenue Allocation and County Governments; and
- (b) provide the public and interested persons or groups with an opportunity to make representations with regard to what should be

in the statement.

(4) Upon submission of the budget policy statement, Parliament shall, by 15th March of the year in which the statement is submitted, consider the statement and may make recommendations with regard to the statement.

(5) The Cabinet Secretary responsible for finance shall take into account any recommendations made by Parliament when finalising the budget for the relevant financial year.

(6) The National Treasury shall publish and publicise the budget policy statement within 7 days after it has been submitted to Parliament.

Economic and financial update.

25. (1) The National Treasury shall prepare and submit to the National Assembly, by the end of March in each financial year, an economic and financial update of the budget policy statement for the first half of the financial year. The update shall include—

- (a) updated macro-economic and financial forecasts with sufficient information to show changes from the forecasts in the budget policy statement;
- (b) information on budget implementation compared to the appropriations and other lawful spending authorities for the first half of the financial year;
- (c) information on how any changes in the forecasts in the budget policy statement, or how actual financial performance for the first half of the financial year, may affect compliance with the fiscal responsibility principles or the financial objectives in the budget policy statement for that financial year; and
- (d) the reasons for any deviation from the fiscal responsibility principles or the financial objectives, together with proposals to address the deviation and the expected time to do so.

(2) The National Treasury shall publish and publicise the economic and financial update within 7 days after it has been submitted to the National Assembly.

Pre-election report.

26. For the year of any general election, the National Treasury shall, within 180 days before the election, prepare and submit to the National Assembly a special economic and financial update report, known as a pre-election report, which shall provide details of—

- (a) all expenditure by the National Government relating to the election, including—

- (i) direct election expenses, including costs of the election and election materials,
- (ii) indirect election expenses, including cost of police and security forces, and
- (iii) any other costs for the election or election materials as may be determined by the Independent Electoral and Boundaries Commission; and.

(b) any planned or anticipated material deviations from the objectives and targets laid out in the budget policy statement for the financial year in which the election takes place.

(2) The National Treasury shall publish and publicise the pre-election report within 7 days after it has been submitted to the National Assembly.

Deviation from principles and objectives.

27.(1) Subject to subsection (2), the National Government may, with the approval of Cabinet, deviate from the fiscal responsibility principles or from the financial objectives in the relevant budget policy statement on a temporary basis where such deviation is necessitated by a major natural disaster or other significant unforeseen event.

(2) If a proposed deviation involves an increase in budgeted expenditure, the deviation may only be made if it is not possible—

- (a) to delay the increased expenditure without harming the public interest; or
- (b) to fund the increased expenditure by reallocation provisions or other means for managing

expenditures that are available to the government.

(3) If there is a change in the National Government, the new government may, with the approval of the Cabinet deviate from the financial objectives in a budget policy statement, but may not deviate from the fiscal responsibility principles, except in accordance with subsections (1) and (2).

(4) The National Treasury shall, within one month after the Cabinet has approved a deviation from the fiscal responsibility principles or financial objectives, provide a report to the National Assembly regarding the deviation. The report shall include information on the reasons for the deviation, together with proposals to address the deviation and the expected time to do so.

(5) The National Treasury shall publish and publicise the report within 7 days after it has been submitted to the National Assembly.

County Governments

Annual plan

28. (1) 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) description of how the County Government is responding to the changing environment;
- (c) programmes to be delivered in the coming financial year with details for each programme of—
 - (i) the strategic priorities that the programme will contribute to,
 - (ii) the services or goods to be provided,
 - (iii) measurable indicators of performance where feasible,
 - (iv) the budget allocated to the

programme,

- (d) payments on behalf of the County Government including grants, benefits and subsidies to be paid;
- (e) significant capital developments;
- (f) description of intentions to develop capability for physical, intellectual, human and other resources including measurable indicators where feasible;
- (g) summary budget in the format required by the National Treasury which may include forecast accounts to be included from a date to be set by the National Treasury; and
- (h) other matters required by the National Treasury.

(2) The format for the annual plan and requirements for the presentation and quality of information shall be as directed by the National Treasury or as prescribed by regulations.

Fiscal strategy paper.

29. (1) The County Treasury for each county shall prepare and submit to the County Assembly, by the 21st March each year, a fiscal strategy paper in respect of the County Government.

(2) The County Treasury shall align its fiscal strategy papers with the financial objectives in the budget policy statement of the National Government.

(3) The fiscal strategy paper shall set out the broad strategic priorities and policy goals that will guide the County Government in preparing its budget for the coming financial year, and over the medium term.

(4) The fiscal strategy paper shall include—

- (a) an analysis of the implications of macro-economic forecasts for the county over the

medium term; and

- (b) the financial outlook with regard to County Government revenues, expenditures and borrowing for the coming financial year and over the medium term.

(5) In preparing the fiscal strategy paper, the County Treasury shall—

- (a) consult with the Commission on Revenue Allocation and the National Treasury; and
- (b) provide the public and interested persons or groups with an opportunity to make representations with regard to what should be in the paper.

(6) Upon submission of the fiscal strategy paper, the County Assembly shall, by the 31st March of the year in which the paper is submitted, consider the statement and may make recommendations with regard to the paper.

(7) The County Treasury shall take into account any recommendations made by the County Assembly when finalising the budget for the relevant financial year.

(8) The County Treasury shall publish and publicise the fiscal strategy paper within 7 days after it has been submitted to the County Assembly.

Economic and financial update.

30.(1) The County Treasury shall prepare and submit to the County Assembly, by the 31st March in each financial year, an economic and financial update in respect of the county for the first half of the financial year. The update shall include—

- (a) updated macro-economic and financial forecasts with sufficient information to show changes from the forecasts in the fiscal strategy paper;

- (b) information on budget implementation compared to the appropriations and other lawful spending authorities for the first half of the financial year;
 - (c) information on how any changes in the forecasts in the fiscal strategy paper, or how actual financial performance for the first half of the financial year, may affect compliance with the fiscal responsibility principles or the financial objectives in the fiscal strategy paper for that financial year; and
 - (d) reasons for any deviation from the fiscal responsibility principles or the financial objectives in the fiscal strategy paper, together with proposals to address the deviation and the expected time to do so.
- (3) The County Treasury shall publish and publicise the economic and financial update within 7 days after it has been submitted to the County Assembly.

Deviation from principles and objectives.

31.(1) Subject to subsection (2), a County Government may, with the approval of its executive committee, deviate from the fiscal responsibility principles or from the financial objectives in the relevant fiscal strategy paper on a temporary basis where such deviation is necessitated by a major natural disaster or other significant unforeseen event.

(2) If a proposed deviation involves an increase in budgeted expenditure, the deviation may only be made if it is not possible—

- (a) to delay the increased expenditure without harming the public interest; or
- (b) to fund the increased expenditure by reallocation provisions or other means for managing

expenditures that are available to the County Government.

(3) If there is a change in the County Government, the new county government may deviate from the financial objectives in a fiscal strategy paper but may not deviate from the fiscal responsibility principles, except in accordance with subsections (1) and (2).

(4) The County Treasury shall, within one month of a decision by the county executive committee to deviate from the fiscal responsibility principles or financial objectives, provide a report to the County Assembly regarding the deviation. The report shall include information on the reasons for the deviation, together with proposals to address the deviation and the expected time to do so.

(5) The County Treasury shall publish and publicise the report within 7 days after it has been submitted to the County Assembly.

Consultation between Governments on Budgetary Matters

National Budget
and Economic
Council

32. (1) There is hereby established a body to be known as the National Budget and Economic Council (in this section referred to as the “Council”) consisting of—

- (a) the Cabinet Secretary responsible for finance, who shall be the chairperson of the Council;
- (b) The Principal Secretary to the National Treasury;
- (c) The accounting officer for the Parliamentary Service Commission or his or her representative;
- (d) the Chief Registrar of the Judicial Service Commission or his or her representative;

(e) the Controller of Budget or his or her representative;

(f) a representative from the Commission on Revenue Allocation;

(g) each County Secretary responsible for finance; and

(h) two representatives appointed by the Cabinet Secretary responsible for finance from persons nominated by organisations representing professional, business or labour organisations at the national level.

(2) The purpose of the Council is to provide a means for consultation by the government on matters relating to budgeting, the economy and financial management.

(3) The National Treasury shall act as the secretariat of the Council.

(4) The Council shall meet at least twice a year and the time and agenda for meetings shall be determined by the chairperson of the Council, in consultation with the other members the Council.

(5) The Council may invite other persons to attend a meeting of the Council.

County Budget and Economic Forum.

33. (1) Every county shall establish a body to be known as the County Budget and Economic Forum (the “Forum”) consisting of—

(a) the Governor of the county, who shall be the chairperson of the Forum;

(b) the other members of the executive committee of the county;

(c) the Principal Secretary to the National Treasury or his or her representative; and

(d) a number of representatives, equal to the

number of members of the executive committee, appointed by the Governor of the county from persons nominated by organisations representing business, labour, community or faith-based groups at the county level.

(2) The purpose of the Forum is to provide a means for consultation by the County Government on matters relating to county plans, budgeting and the economy at the county level.

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

(4) The Forum shall meet at least twice a year and the time and agenda for meetings shall be determined by the chairperson of the Forum, in consultation with the other members the Forum.

(5) The Forum may invite other persons to attend a meeting of the Forum.

PART IV- NATIONAL GOVERNMENT BUDGET

Stages in the budget process.

34.(1) The budget process for the National Government in any financial year consists of the following stages—

- (a) planning and establishment of financial and economic priorities at the national level over the medium term;
- (b) overall estimation of revenues and expenditures;
- (c) division of revenue between the National Government and County Governments under the relevant Division of Revenue Bill;
- (d) preparation of budget estimates;

- (e) submission of estimates to the National Assembly for approval;
- (f) enactment of Appropriation Bill and other Bills required to implement the budget;
- (g) budget implementation;
- (h) accounting for, and evaluation of, budgeted revenues and expenditures; and
- (i) auditing.

Management of process and guidelines.

35. (1) The Cabinet Secretary responsible for finance, through the National Treasury, shall manage the budget process at the national level.

(2) Every year, not later than 30th August, the Cabinet Secretary responsible for finance shall issue a circular setting out guidelines on the budget process to be followed by all National Government entities. The circular shall include—

- (a) the schedule for preparation of the budget indicating key dates by which various exercises are to be completed;
- (b) procedures for the review and projection of revenues and expenditures;
- (c) key policy areas and issues to be taken into consideration when preparing the budget;
- (d) procedures concerning the manner of public participation in the budget process;
- (e) procedures for consultation between the two levels of government;
- (f) the format for submission of budget

information and documents; and

- (g) any other information relevant to the budget process.

(3) National Government entities shall comply with the guidelines and the key dates indicated in the schedule.

Submission of
budget.

36. (1) The Cabinet Secretary responsible for finance shall submit to the Cabinet the budget estimates and other documents supporting the budget, and the Bills to implement the budget, in sufficient time to permit compliance with the dates in this section.

(2) The Cabinet Secretary responsible for finance shall submit the following documents in respect of the National Government to the National Assembly no later than the following dates of every year—

- (a) the budget policy statement, the Division of Revenue Bill and the County Allocation of Revenue Bill by the 28th February; and
- (b) the budget estimates, supporting documents, the Appropriation Bill and any other Bills required to implement the budget by the 30th April.

(3) The Parliamentary Services Commission shall submit the budget estimates for Parliament, including proposed appropriations, to the National Assembly no later than the 30th April.

(4) The Chief Registrar of the Judiciary shall submit the budget estimates for the Judiciary, including proposed appropriations, to the National Assembly no later than the 30th April.

(5) The Parliamentary Services Commission and the Chief Registrar of the Judiciary shall submit copies of the budget estimates referred to in subsections (3) and (4) respectively to the National Treasury at the same time that

they submit them to the National Assembly.

(6) The Cabinet Secretary responsible for finance shall submit to the National Assembly no later than the 15th May any comments of the National Treasury on the budgets proposed by the Parliamentary Services Commission and the Chief Registrar for the Judiciary..

(7) The National Treasury shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the various parties involved in the process to meet the requirements of the Constitution and this Act.

Budget documents.

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

(a) a budget summary that includes—

- (i) a summary of significant budget policies including policies on revenue, expenditure, debt and deficit financing, and
- (ii) an explanation of how the budget relates to the fiscal responsibility principles and to the financial objectives;

(b) budget estimates that include—

- (j) a list of all entities that are to receive funds appropriated from the budget of the National Government,
- (ii) estimates of revenue allocated to, and expenditures projected from, the Equalisation Fund over the medium term, with an explanation of the reasons for those revenue allocations and expenditures,

- (iii) all revenue allocations to County Governments from the National Government, including conditional and unconditional grants,
 - (iv) all estimated revenue by broad economic classification,
 - (v) all estimated expenditure, by Vote, showing recurrent and development expenditures,
 - (vi) an estimate of any budget deficit for the financial year, with proposals for financing the deficit over the medium term;
- (c) information regarding loans made by or to the National Government, including an estimate of principal, interest and other charges to be made in the financial year in respect of such loans;
- (d) information regarding any payments and liabilities to be made or incurred by the National Government for which an appropriation is not to be made by an Appropriation Act, together with the legislative authority for any such payments or liabilities; and
- (e) a statement by the National Treasury specifying the measures taken by the National Government to implement any recommendations made by the National Assembly with regard to the budget for the previous financial year.
- (2) The Cabinet Secretary responsible for finance shall determine the nature of information that is to be presented in the budget estimates and the form of its presentation.
- (3) The form of presentation of the expenditure appropriations in the Appropriation Bill shall—

- (c) be precise and informative;
- (b) be sufficiently flexible to facilitate budget implementation; and
- (c) clearly identify the entities, and accounting officers (by position, not name), who are responsible for administering the appropriations in the Appropriations Bill.

Budget approval.

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

(2) Any amendment to the budget estimates may only be made if—

(a) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in one or more proposed appropriations; and

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

(3) Upon approval of the budget estimates by the National Assembly, the National Treasury shall consolidate them, and publish and publicise them within 21 days after approval.

Delay in enactment of Appropriation Bill.

39. If the Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorise the withdrawal of money from

the Consolidated Fund in accordance with Article 222 of the Constitution.

Reallocation of funds appropriated.

40. An accounting officer for a National Government entity may reallocate funds between programs, or between sub-Votes, in the budget for a financial year if—

- (a) there are provisions in the budget of a program or sub-Vote which are unlikely to be utilised;
- (b) a request for the reallocation has been made to the National Treasury explaining the reasons for the reallocation and the National Treasury has approved the request; and
- (c) the total sum of all reallocations made to or from a program or sub-Vote does not exceed 10% of the total expenditure approved for that program or sub-Vote for that financial year.

Supplementary appropriations.

41. (1) The National Government may, in accordance with Article 223 of the Constitution, spend money that has not been appropriated.

(2) In any financial year, the National government may not spend an amount of money under subsection (1) that is more than 10% of the sum appropriated for that financial year for any one vote, unless in special circumstances Parliament approves a higher percentage.

(3) The supplementary budget that is submitted in support of a Bill for a supplementary appropriation for authority to spend money under subsection (1) shall describe how the additional expenditure relates to the fiscal responsibility principles and fiscal objectives.

Lapsing of moneys appropriated.

42. (1) 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.

(2) Any money appropriated that has been withdrawn from the exchequer account but has not been spent or committed at the end of the financial year shall be paid into the exchequer account.

PART V-COUNTY GOVERNMENT BUDGET

Stages in the budget process.

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

- (a) planning and establishment of financial and economic priorities for the county over the medium term;
- (b) overall estimation of revenues and expenditures;
- (c) allocation of revenue among counties under the relevant County Allocation of Revenue Bill;
- (d) preparation of budget estimates;
- (e) submission of estimates to the County Assembly and approval of estimates by the County Assembly;
- (f) enactment of Appropriation Bill;
- (g) budget implementation;
- (h) accounting for, and evaluation of, budgeted revenues and expenditures; and
- (i) auditing.

Management of process and guidelines.

44. (1) The County Secretary responsible for finance shall manage the budget process at the county level.

(2) Every year, not later than the 30th September, the County Secretary responsible for finance shall issue a circular setting out guidelines on the budget process to be followed by all County Government entities. The circular

shall include—

- (a) the schedule for preparation of the budget indicating key dates by which various exercises are to be completed;
- (b) procedures for the review and projection of revenues and expenditures;
- (c) key policy areas and issues to be taken into consideration when preparing the budget;
- (d) procedures concerning the manner of public participation in the budget process;
- (e) the format of submission of budget information and documents; and
- (f) any other information relevant to the budget process.

(3) County Government entities shall comply with the guidelines and the key dates indicated in the schedule.

Submission of budget.

45. (1) The County Secretary responsible for finance shall submit to the county executive committee the budget estimates and other documents supporting the budget, and the Bills to implement the budget, in sufficient time to permit compliance with the dates in this section.

(2) The County Secretary responsible for finance shall submit the following documents in respect of a County Government to the County Assembly no later than the following dates of every year—

- (a) the fiscal strategy paper by the 21st March;
- (b) the budget estimates, supporting documents, the Appropriation Bill and any other Bills required to implement the budget by the 30th April.

(3) (1) The County Secretary responsible for finance shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the

various parties involved in the process to meet the requirements of the Constitution and this Act.

Budget documents.

46.(1) The County Secretary responsible for finance shall submit to the County Assembly the following documents in respect of the budget for every financial year—

- (a) a budget summary that includes—
 - (i) a summary of significant budget policies including revenue, expenditure, debt and deficit financing, and
 - (ii) an explanation of how the budget relates to the fiscal responsibility principles and to the financial objectives;
- (b) budget estimates that include—
 - (i) a list of all entities that are to receive funds appropriated from the budget of the County Government,
 - (ii) estimates of revenue projected from the Equalisation Fund over the medium term,
 - (iii) all revenue allocations from the National Government over the medium term, including conditional and unconditional grants,
 - (iv) all other estimated revenue by broad economic classification, and
 - (v) all estimated expenditure, by Vote, showing recurrent and development expenditures;
- (c) information regarding loans made by or to the County Government, including an estimate of

principal, interest and other charges to be made in the financial year in respect of such loans;

- (d) information regarding any payments and liabilities to be made or incurred by the County Government for which an appropriation is not to be by an Appropriation Act, together with the legislative authority for any such payments or liabilities; and
- (e) a statement by the County Secretary responsible for finance specifying the measures taken by the County Government to implement any recommendations made by the County Assembly with regard to the budget for the previous financial year.

(2) The National Treasury shall prescribe by regulations the nature of information that is to be presented in the budget estimates and the form of its presentation.

(3) The form of presentation of the expenditure appropriations in the Appropriation Bill shall—

- (d) be precise and informative;
- (b) be sufficiently flexible to facilitate budget implementation; and
- (c) clearly identify the entities, and accounting officers (by position, not name), who are responsible for administering the appropriations in the Appropriations Bill.

Budget approval.

47. The County Assembly shall consider the County Government's budget estimates with a view to approving them, with or without amendments, in time for the Appropriation Bill and any other Bills required to implement the budget to be assented to by the 30th June

each year.

(2) Any amendment to the budget estimates may only be made if—

(a) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in one or more proposed appropriations; and

(b) any proposed reduction in expenditures is used to reduce the level of debt.

(3) Upon approval of the budget estimates by the County Assembly, the County Treasury shall consolidate them, and publish and publicise them within 21 days after approval.

Delay in enactment
of Appropriation
Bill.

48. (1) Subject to subsection (2), if the Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, a County Assembly may authorise the withdrawal of money from the County Revenue Fund.

(2) Article 222 of the Constitution shall apply in the case of authorisation of the withdrawal of money under subsection (1), except that—

(a) references in that Article to the National Assembly shall be read as references to the County Assembly;

(b) references in that Article to the Consolidated Fund shall be read as references to the County Revenue Fund; and

(c) references in that Article to the national government shall be read as references to the county government.

Reallocation of funds appropriated.

49. (1) Subject to subsection (2), an accounting officer for a County Government entity may utilise a saving in a sub-item of a Vote appropriated within a principal item of a Vote towards the defraying of excess expenditure under another sub-item within the same principal item, unless the County Treasury directs otherwise.

(2) An accounting officer shall not authorise the transfer of 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 for a County Government entity may reallocate funds between programs, or between sub-Votes, in the budget for a financial year if—

- (a) there are provisions in the budget of a program or sub-Vote which are unlikely to be utilised;
- (b) a request for the reallocation has been made to the County Treasury explaining the reasons for the reallocation and the County Treasury has approved the request; and
- (c) the total sum of all reallocations made to or from a program or sub-Vote does not exceed 10% of the total expenditure approved for that program or sub-Vote for that financial year.

Supplementary appropriations.

50. (1) Subject to subsection (2), a County Government, may spend money that has not been appropriated.

(2) Article 223 of the Constitution shall apply in the case of the expenditure of money under subsection (1), except that—

- (a) clause (1)(b) of that Article shall not apply;

(b) references in that Article to the national government shall be read as references to the county government; and

(c) references in that Article to Parliament and the National Assembly shall be read as references to the County Assembly.

Lapsing of moneys appropriated.

51. (1) 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.

(2) 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-FINANCIAL REPORTING

Annual reporting by Treasuries.

52. (1) At the end of each financial year, the National Treasury, for the National Government, and each County Treasury, for their County Government, shall prepare consolidated annual accounts and financial statements, which shall include—

(a) a statement of monies paid into and paid out of the exchequer account of the government;

(b) summaries of the following—

(i) the appropriation accounts and statements prepared by accounting officers under section 53; and

(ii) the statements prepared by receivers of revenue under section 54.

(c) a statement of payments made out of the exchequer account that are authorised by written law other than an Appropriation Act;

(d) a statement of the total amount of debt of the government and its entities that is outstanding at the end of the financial year; and

(e) such other statements as the National Assembly or a County Assembly, as the case may be, may require.

(2) The accounts, statements and summaries referred to in subsection (1) shall be in such form as may be determined by the National Treasury.

(3) The Principal Secretary to the National Treasury and the Principal Secretary to the County Treasury shall submit the accounts, statements and summaries referred to in subsection (1) to the Auditor-General not later than four (4) months after the end of the financial year to which they relate. In the case of a County Treasury, a copy of the accounts, statements and summaries shall also be submitted to the National Treasury.

Annual reporting
by accounting
officers.

53. (1) At the end of each financial year, accounting officers shall prepare accounts and financial statements in respect of any entity for which they are responsible, and this shall include—

(a) appropriation accounts showing the services for which monies expended were voted, the sums actually expended on each service and the status of each Vote compared with the appropriation for the Vote, together with a statement explaining any variation between the expenditure and the sums voted, and any other information in such form as the relevant Treasury may direct;

(b) a statement of debt that is outstanding at the end of the financial year;

- (c) a statement of debt guaranteed by the National Government as at the end of the financial year;
- (d) a statement of assets and liabilities as at the end of the financial year, in respect of the recurrent Vote, the development Vote and funds and deposits; and
- (e) a statement of accounting policies.

(2) The accounts and statements referred to in subsection (1) shall be in such form as may be determined by the National Treasury.

(3) The accounts and statements referred to in subsection (1) shall be submitted to the Auditor-General, with a copy to the National Treasury and the relevant County Treasury, within three months after the end of the financial year.

(4) In the case of the accounting officer for the Office of the Auditor-General, the annual accounts and statements referred to in subsection (1) shall also be submitted for audit to a qualified accountant appointed by the National Assembly.

Annual reporting
by receivers and
collectors of
revenue.

54. (1) At the end of each financial year, receivers of revenue and collectors of revenue shall prepare accounts in respect of the revenue received and collected by them respectively in that financial year.

(2) The accounts referred to in subsection (1) shall include—

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

(b) a statement of arrears of revenue.

(3) The accounts shall be submitted to the Auditor-General, with a copy to the National Treasury, within three months after the end of the financial year.

(4) Within three months after the end of each financial year, receivers of revenue and collectors of revenue shall submit to the National Assembly or a County Assembly, as the case may be, a report with respect to all waivers and variations of taxes, fees or charges granted by them in a financial year,

Annual reporting
by administrators
of public funds.

55. (1) At the end of each financial year, every person who administers a public fund established under any written law shall prepare accounts and financial statements in respect of the fund.

(2) The accounts and financial statements shall include such particulars and be in such a form as the National Treasury may direct.

(3) The accounts and financial statements shall be submitted to the Auditor-General, with a copy to the National Treasury, within three months after the end of the financial year

Quarterly report by
accounting
officers.

56. (1) Accounting officers shall prepare reports for each quarter of the financial year in respect of any entity for which they are responsible.

(2) The quarterly reports shall contain information on the financial and non-financial performance of the entity and shall be in such form as may be determined by the National Treasury.

(3) The reports shall be submitted to the National Treasury and the County Treasury, as the case may be, no later than 15 days after the end of each quarter.

(4) The National Treasury shall, within 45 days after the end of each quarter, consolidate the quarterly reports, submit them to the National Assembly and publish and publicise them.

(5) The County Treasury shall, within 30 days after the end of each quarter, consolidate the quarterly reports, submit them to the County Assembly and publish and publicise them.

Reporting of
National
Government loans
and guarantees.

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

(2) The record referred to in subsection (1) shall include the following information with respect to every loan referred to in that subsection—

- (a) the principal of the loan and the terms and conditions applicable to the loan, including interest and other charges payable and the terms of repayment;
- (b) the amount of the loan advanced at any particular time;
- (c) the principal, interest and other charges paid at any particular time; and
- (d) the balance of principal, interest and other charges outstanding at any particular time.

(3) With respect to loans made to the National Government by parties outside Kenya or denominated in foreign currency, the Cabinet Secretary responsible for finance shall submit a report to the National Assembly no later than 15 days after the end of each quarter of the financial year.

(4) The report under subsection (3) shall include the

following information with respect to every loan referred to in that subsection—

- (a) the name of the parties to the loan;
- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time of the report;
- (e) the purpose for which the loan was used and the benefits of the loan; and
- (f) any other information that the Cabinet Secretary responsible for finance considers appropriate.

(5) The National Treasury shall maintain a record of all guarantees given by the National Government in respect of loans and make the record available in a timely manner to the Parliament upon request.

(6) The record referred to in subsection (1) shall include the following information with respect to every guarantee referred to in that subsection—

- (a) the name of the parties to the loan that is guaranteed; and
- (b) the principal of the loan that is guaranteed and the terms and conditions applicable to the loan, including interest and other charges payable and the terms of repayment.

(7) On or before the 31st March, the National Treasury shall submit to the National Assembly a statement setting out the debt management strategy of the National Government

over the medium term with regard to its actual liability and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities.

(8) The statement referred to in subsection (7) shall include the following information—

- (a) the sources of loans made to the National Government and the nature of guarantees given by the National Government;
- (b) the principal risks associated with those loans and guarantees;
- (c) the assumptions underlying the debt management strategy; and
- (d) an analysis of the sustainability of the amount of debt, both actual and potential.

Reporting of
County
Government loans.

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

(2) The record referred to in subsection (1) shall include the following information with respect to every loan referred to in that subsection—

- (a) the principal of the loan and the terms and conditions applicable to the loan, including interest and other charges payable and the terms of repayment;
- (b) the amount of the loan advanced at any particular time;
- (c) the principal, interest and other charges paid at any particular time; and
- (d) the balance of principal, interest and other charges outstanding a any particular time.

(3) With respect to loans made to the National Government by parties outside Kenya or denominated in foreign currency, the County Secretary responsible for finance shall submit a report to the County Assembly no later than 15 days after the end of each quarter of the financial year.

(4) The report under subsection (3) shall include the following information with respect to every loan referred to in that subsection—

- (a) the name of the parties to the loan;
- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time of the report;
- (g) the purpose for which the loan was used and the benefits of the loan; and
- (h) any other information that the Cabinet Secretary responsible for finance considers appropriate.

(5) On or before the 31st March, the County Treasury shall submit to the County Assembly a statement setting out the debt management strategy of the County Government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities.

(6) The statement referred to in subsection (5) shall include the following information—

- (a) the sources of loans made to the County

Government;

- (b) the principal risks associated with those loans;
 - a. the assumptions underlying the debt management strategy; and
 - b. an analysis of the sustainability of the amount of debt, both actual and potential.

Additional reporting.

59. The National Treasury and County Treasuries shall prepare and submit such other reports to Parliament and County Assemblies respectively as the Assemblies may require.

Extension of time.

60. The National Assembly or a County Assembly, as the case may be, may extend by resolution any time limit provided in this Part for submitting accounts, statements, reports or summaries.

PART VII-FINANCIAL MANAGEMENT

Prohibitions.

61.(1) No public officer or government entity shall expend public money other than in accordance with an appropriation under the Appropriation Act, or an authority provided by an Act of Parliament or of a County Assembly, or by other lawful authority.

(2) The prohibition in subsection (1) shall include a prohibition of the Kenya Revenue Authority from withdrawing any funds from the Consolidated Fund, except as authorised by the National Treasury and the Controller of Budget, in order to—

- (a) refund any tax, levy or duty credit or any other charge in connection with taxes, levies or duties;
- (b) make other refunds approved by the National Treasury; or
- (c) transfer to a member of the Kenyan Customs Union any money collected on its behalf.

(3) No public officer or government entity shall raise revenues other than in accordance with the Constitution, an Act of Parliament or of a County Assembly, or by other lawful authority.

(4) No public officer or government entity shall make commitments that have financial implications for the National Government budget or a County Government budget that are not authorised by the Constitution, by an Act of Parliament or of a County Assembly, or by other lawful authority.

(5) No public officer or government entity shall borrow money, issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind a government entity to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction is—

- (a) authorised by this Act;
- (b) authorised by any other legislation governing the establishment or functions of the entity; and
- (c) in the case of loans or guarantees, is within any limits provided under this Act.

(6) No public officer shall direct another public officer to commit an act that is in contravention of the Constitution, this Act or any other Act of

Parliament, or any Act of a County Assembly.

Consolidated
Fund.

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

(2) The Consolidated Fund shall be held in a bank account called the exchequer account, into which all revenues and proceeds of loans raised shall be paid and credited and from which issues for public services shall be made in a timely manner.

(3) The exchequer account shall be maintained at the Central Bank of Kenya and shall be administered by the National Treasury.

(4) At no time shall the exchequer account be overdrawn.

(5) The Central Bank of Kenya shall provide statements in respect of the exchequer account to the National Treasury showing payments into and issues from the account at such intervals and in such form as the National Treasury may direct.

(6) The National Treasury shall make a requisition for the approval of the Controller of Budget to a withdrawal from the Consolidated Fund that is authorised under the Constitution or an Act of Parliament that approves the appropriation of moneys.

(7) Approval by the Controller of Budget of a withdrawal from the Consolidated Fund, together with written instructions from the National Treasury to issue the approved withdrawal, shall be sufficient authority for the Central Bank of Kenya to issue amounts from the exchequer account in accordance with the approval and instructions.

Equalisation Fund.

63. (1) The National Treasury shall administer the

Equalisation Fund established by Article 204 of the Constitution in accordance with that Article.

(2) The Equalisation Fund shall be held in the exchequer account, into which all revenues paid under Article 204(1) of the Constitution shall be paid and from which all money for uses specified in Article 204(2) shall be paid in a timely manner.

Contingencies
Fund.

64. (1) The National Treasury shall administer the Contingencies Fund established by Article 208 of the Constitution in accordance with that Article..

(2) The Contingencies Fund shall consist of such monies as are appropriated for the Contingencies Fund by an Appropriation Act.

(3) The Cabinet Secretary responsible for finance may make advances from the Contingencies Fund if he or she is satisfied there is an urgent and unforeseen need for the expenditure for which there is no other authority.

(4) For the purposes of subsection (3), the need for an expenditure is—

(a) urgent if it cannot be delayed until a future budget year without harming the public interest; and

(b) unforeseen if it has not been provided for in the budget for the current financial year.

(5) No expenditure from the Contingencies Fund shall become a permanent charge on the Contingencies Fund.

(6) The National Treasury shall include the following information on expenditures from the Contingencies Fund in the financial reports of the National Government—

(a) the date and amount of each expenditure and

the entity making the expenditure; and

- (b) a statement of the reasons for the expenditure and how it meets the requirements of subsections (3) and (4).

(7) Within three months after the end of each financial year the National Treasury shall prepare and submit to the Auditor-General an account of the Contingencies Fund in respect of the preceding financial year.

County Revenue Fund.

65. (1) There is hereby established a County Revenue Fund for each County Government, into which shall be paid all money raised or received by or on behalf of each County Government, except money that—

- (a) is excluded from the County Revenue Fund by this Act or another Act of Parliament and is payable into another public fund established for a specific purpose; or
- (b) may under an Act of Parliament or an Act of a County Assembly be retained by the County Government that received it for the purposes of defraying the expenses of the County entity.

(2) The County Revenue Fund shall be administered by the County Treasury in accordance with Article 207 of the Constitution.

(3) An account called the County Revenue bank account shall be held in the County Revenue Fund, into which all revenues and proceeds of loans raised shall be paid and credited and from which issues for public purposes shall be made in a timely manner.

(4) At no time shall the County Revenue bank account be overdrawn.

(5) The bank in which the County Revenue bank account is held shall provide statements in respect of the bank account to the County Treasury showing payments into and issues from the account at such intervals and in such form as the County Treasury may direct.

(6) The County Treasury shall make a requisition for the approval of the Controller of Budget to a withdrawal from the County Revenue Fund that is authorised under—

(a) an Act of the County Assembly that approves the appropriation of moneys; or

(b) an Act of Parliament or an Act of a County Assembly that makes a charge against the County Revenue Fund.

Other public funds.

66. (1) Public funds at the national and county level, other than those established by the Constitution or an Act of Parliament, may only be established by the Cabinet Secretary responsible for finance.

(2) Money in a fund established under this section, including any earnings or accruals referred to in subsection (3), shall only be expended for the purposes for which the fund is established.

(3) Unless the Cabinet Secretary responsible for finance directs otherwise, earnings of, or accruals to, a fund established under this section shall be retained in the fund.

(4) The Cabinet Secretary responsible for finance may wind up a fund established under this section and, upon the winding up of a fund

(a) any amounts remaining in the fund shall be paid into the exchequer account or into a County Revenue bank account, as the case may be; and

(b) any deficit of the fund shall, with the approval of the National Assembly or a County assembly, as the case may be, be paid from the exchequer account or from a County Revenue bank account respectively.

(5) A person who administers a fund established under this section shall prepare accounts for the fund for each financial year and submit them to the Auditor-General within three months after the end of the financial year.

Consultation on
County taxes and
charges.

67. Before imposing a tax or other revenue raising measures, a County Government shall consult with the National Treasury and the Commission on Revenue Allocation to ensure that any proposed tax or revenue raising measures are not contrary to Article 209(5) of the Constitution.

Losses and write-offs.

68. (1) An accounting officer may write-off any loss not exceeding an amount, and in circumstances, prescribed by regulations.

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

(3) The Cabinet Secretary responsible for finance may, with the approval of Cabinet, authorise an accounting officer to write off a loss exceeding the further amount referred to in subsection (2).

(4) Accounting officers shall maintain a record of any losses and write-offs occurring in a financial year and include them in the annual financial statements for that financial year.

Spending authority
of accounting
officer.

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

(2) No appropriation is required for the expenditure of funds under subsection (1).

Banking
arrangements.

70.(1) The National Treasury shall authorise the opening, operating and closing of bank accounts for government entities at the national and county level, except as provided for by an Act of Parliament.

(2) The National Treasury shall establish a treasury single account through which payments of money to the various National Government entities shall be issued in such manner as may be prescribed.

(3) Each County Government shall, subject to subsection (1), establish a single treasury account through which payments of money to the various County Government entities shall be issued in such manner as may be prescribed.

(4) An accounting officer shall not allow a bank account of an entity for which they are responsible to be overdrawn.

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

(6) The National Treasury shall have access to any information regarding the bank accounts of a County Government or any of its entities, and the relevant bank shall provide such access in a timely manner.

Cash advances.

71. (1) An accounting officer may authorise payment of a cash advance to public officers to be used for payments made by the officers in the course of their duties.

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

(3) A public officer to whom cash advance has been made shall surrender the cash advance in accordance with any requirement set out in any of the following—

- (a) the documents used to apply for or authorise the cash advance;
- (b) directions issued by the National Treasury;
- (c) regulations;
- (d) written notice from an accounting officer.

(4) If a public officer fails to account for the use of a cash advance or fails to surrender it when required, the following apply—

- (a) the amount of the cash advance not accounted for or not surrendered shall become a debt owed by the public officer;
- (b) the debt shall be subject to interest at a prescribed rate; and
- (c) the debt and interest may be recovered from any salary or other amounts owed to the public officer.

Withholding funds.

72.(1) The Cabinet Secretary responsible for finance is authorised to stop the transfer of funds to a National Government or County Government in accordance with

Article 225(3) of the Constitution.

Management of cash.

73.(1) The National Treasury and the County Treasuries, at the national and county level respectively, shall give directions to public officers or entities who receive and pay public money on the manner in which they shall conduct their cash management.

(2) All government entities shall submit annual cash plans to the relevant Treasury in a form and manner directed by the relevant Treasury.

(3) The relevant Treasury may invest for such periods and on such terms and conditions within the scope prescribed by regulations, any money held in a government bank account or an account of an entity that contains idle funds and such investment shall be—

(a) on deposit with any reputable bank as approved for this purpose by the Cabinet Secretary responsible for finance in the case of deposits by the National Government, and the County Secretary responsible for finance in the case of deposits by a County Government;

(b) in public securities; or

(c) in such other securities as the Cabinet Secretary responsible for finance may from time to time approve within the scope prescribed by regulations, which securities the relevant Treasury may from time to time sell, or convert into money.

(4) The relevant Treasury may, subject to any regulations—

(a) invest money for any period and on any terms and conditions that it thinks

fit; and

- (b) sell, or convert into money, any of the securities.

(4) All interest received from investments under this section and all money received from the redemption or maturity of the investment, and from the sale or conversion of securities, shall be paid into the exchequer account or the County Revenue bank account, as the case may be.

(5) The relevant Treasury may incur costs, charges, or expenses in connection with negotiating, placing, managing, servicing, or converting any investment entered into in accordance with this section and such costs, charges or expenses may be paid from the exchequer account or the County Revenue bank account, as the case may be.

Grants and donations.

74.(1) On behalf of the National Government, the Cabinet Secretary responsible for finance shall receive all grants and donations made to the National Government or to County Governments by a foreign government or any other entity or person.

(2) Accounting officers shall ensure that donor assistance in goods and services shall be recorded in government accounts prior to utilisation

(3) Accounting officers shall ensure that no development partner projects are implemented by entities for which they are responsible unless the projects are part of annual appropriations or are authorised by the Cabinet Secretary responsible for finance.

(4) The National Treasury shall ensure that activities financed by assistance from donors that have agreements with the National Government or with County Governments for such assistance shall be accounted for

using the administrative, accounting and auditing procedures of the relevant government and this shall include ensuring that the financial accounting rules and procedures of the relevant government are strictly followed in the accounting for receipt of funds for development partner assistance under agreements with the relevant government, and in the accounting for expenditure of such funds.

(5) The Cabinet Secretary responsible for finance may grant an exemption in writing from the requirements of subsections (1) to (4) if such exemption is required in the public interest.

Borrowing by
National
Government.

75.(1) The objective with regard to all government borrowing is to ensure that the government's financing needs and its payment obligations are met at the lowest possible cost that is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) Except as authorised by the Constitution, this Act or any other Act of Parliament, it shall not be lawful for the National Government to borrow money.

(3) The National Governments may only borrow money for purposes prescribed by regulations.

(4) The Cabinet Secretary responsible for finance, on behalf of the National Government, may under agreement or written instruments, raise a loan within or outside Kenya on terms and conditions that, in the opinion of the Cabinet Secretary responsible for finance, are in accordance with—

- (a) the purposes prescribed in regulations;
- (b) the fiscal responsibility principles and the financial objectives in the most recent budget policy statement;

- (c) the debt management strategy of the National Government over the medium term; and
- (d) the objectives set out in subsection (1).

(5) The public debt is a charge on the Consolidated Fund except if all or part of the public debt is designated as a charge on other public funds by the Cabinet Secretary responsible for finance or except as provided for under any Act of Parliament

(6) For the purposes of this section, “the public debt” means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the National Government.

(7) The Cabinet Secretary responsible for finance may establish such sinking fund or funds for the redemption of loans raised under this Act as he or she deems necessary or desirable.

(8) The proceeds of any loan raised under this Act shall be paid into the Consolidated Fund, unless expressly provided otherwise in this Act.

(9) The National Treasury may appoint advisers, agents and underwriters for the purposes of raising loans.

(10) Any expenses incurred in connection with borrowing by the National Government are a charge on the Consolidated Fund or on any other public fund designated by the Cabinet Secretary responsible for finance.

Borrowing by
County
Government.

76.(1) In accordance with Article 212 and 213 of the Constitution, the following terms and conditions shall apply with regard to a guarantee by the National Government of a loan to the County Government —

- (a) the capital project shall generate sufficient resources to service the debt repayment;

(b) the debt management capacity of the county shall be sufficient to sustain the loan;

(c) the fiscal position of the county over the past three years and over the medium term shall be satisfactory;

(d) such other terms and conditions as may be prescribed by regulations;

(2) Any loan referred to in subsection (1) require the approval of the Cabinet Secretary responsible for finance, which approval may be made subject to additional terms and conditions that the Cabinet Secretary responsible for finance considers necessary or desirable to meet the objective of government borrowing set out in section 75(1).

(3) In addition to the borrowing authorised by subsection (1), a County Government may borrow from the National Government subject to such terms and conditions as the Cabinet Secretary responsible for finance may impose and in accordance within any prescribed criteria.

Borrowing by
government
entities.

77.(1) A National or County Government entity may borrow only—

(a) from the National Government, subject to section 76 of this Act.

(b) from a bank by way of a temporary bank overdraft, with the approval of the Cabinet Secretary responsible for finance, subject to such terms and conditions as the Cabinet Secretary responsible for finance may impose and in accordance with any prescribed criteria.

(2) Government entities shall obtain the approval of the Cabinet Secretary responsible for finance for their intended program of borrowing, refinancing and

repayment of loans for the medium term and for the forthcoming financial year, prior to the beginning of that financial year.

(3) Government entities shall obtain the approval of the Cabinet Secretary responsible for finance for any changes to their program of borrowing, refinancing and repayment during the financial year.

(4) The National Government is not liable to contribute towards payment of any debt or liability of a government entity, unless the National Government has expressly agreed to be liable.

Authority to execute loan documents.

78. (1) The following public officers have the power to execute loan documents—

- (a) the Cabinet Secretary responsible for finance, for borrowing by the National Government;
- (b) the County Secretary responsible for finance, for borrowing by a County Government.

(2) Except as provided in the Constitution or this Act, the Cabinet Secretary responsible for finance and the County Secretary responsible for finance, as the case may be, shall give written authorisation for any other person to execute loan documents.

Securities.

79. (1) The National Government shall not issue securities, whether for money borrowed or any other purpose, except as expressly authorised by this Act.

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

(3) The authority of the Cabinet Secretary responsible for finance to borrow money shall include the authority to borrow money by way of the issue of government securities, including treasury bills, treasury bonds, treasury notes, government stocks and any other debt instrument issued by the government in accordance with the provisions of this or any other Act.

(4) Securities referred to in subsection (3) may be issued in one or more series and may be made pursuant to loan agreements between the government and one or more specified banks, financial institutions, or security dealers and such agreements may be amended from time to time.

(5) Any security issued under this Act must be taken or given in the name of the government.

(6) A security that must be executed by the government for the purposes of this Act must be executed for and on behalf of the government by—

- (a) the Cabinet Secretary responsible for finance;
- (b) a person acting in accordance with a delegation from the Cabinet Secretary responsible for finance; or
- (c) a borrowing agent appointed for the purpose under this Act.

(7) For the purposes of subsection (6), it is enough if a facsimile of the signature of a person who is required to execute a security under this section is reproduced on the security.

(8) The Cabinet Secretary responsible for finance may, with the consent of the holder as may be necessary, vary the terms and conditions of a government security.

(9) At the request of the holder of a government security, the Cabinet Secretary responsible for finance

may—

- (a) direct that the principal, or any interest payable in respect of the principal, be paid at a place in Kenya or elsewhere that is other than the place otherwise provided; and
- (b) revoke the direction and give other directions.

(10) The Cabinet Secretary responsible for finance may direct the issue of a new government security to replace a government security that is lost, damaged, or destroyed if the Cabinet Secretary responsible for finance is satisfied, on receiving evidence, of the loss, damage, or destruction.

(11) Subject to the provisions of other written laws, secondary trading government securities shall be carried out in such manner as may be prescribed. In this subsection, “secondary trading” means any activity leading to a change in the ownership of a government security before its redemption date.

(12) Subject to the provisions of this Act, all principal payable under a government security shall be paid from a government bank account.

(13) Any expenses incurred in connection with the issue of securities by the National Government are a charge on the Consolidated Fund.

Derivative transactions.

80. (1) The National Government shall only enter into a derivative transaction, whether directly or indirectly or through an intermediary, in a manner to be prescribed by regulations.

(2) The Cabinet Secretary responsible for finance, on behalf of the government, may enter into a derivative transaction if it appears to the Cabinet Secretary responsible for finance to be necessary or expedient in the

public interest to do so.

(3) The Cabinet Secretary responsible for finance may enter into a derivative transaction on any terms and conditions, within the scope set by regulation, that the Cabinet Secretary responsible for finance thinks fit.

(4) Any money that is required to be paid by the government under a derivative transaction shall be paid from a government bank account.

(5) Any expenses incurred in connection with a derivative transaction entered into by the government are a charge on the Consolidated Fund.

Lending.

81. (1) The National Government shall only lend money to a person, organisation or entity in accordance with terms and conditions to be prescribed by regulations.

(2) Lending by the National Government shall be subject to such terms and conditions as may be prescribed by regulations.

(3) The Cabinet Secretary responsible for finance may, in relation to any money lent by the government under this section—

- (a) accept all money payable under the loan in any currency that the Cabinet Secretary responsible for finance thinks fit; and
- (b) agree at any time to the variation of any security issued in respect of the loan.

(4) Money loaned under this section shall come from an appropriation for development expenditures or from other authority approved by Parliament for the purpose for which the loan is made.

(5) A security taken in respect of a loan under this

section shall be taken in the name of the National Government.

(6) The Cabinet Secretary responsible for finance may, on behalf of the National Government, exercise any of the powers, functions, rights and duties of the National Government in respect of the security for a loan.

Guarantees.

82.(1) Subject to subsection (11), the Cabinet Secretary responsible for finance on behalf of the Government may give a guarantee, indemnity, or security, upon such terms and conditions as the Cabinet Secretary responsible for finance thinks fit, within the scope prescribed by regulations, in respect of the performance of any obligation by any person, organisation, entity or any other sub-national level of government if created, provided that the following requirements are met—

- (a) the guarantee is a formal guarantee and not a letter of comfort or other communication purporting to commit the government to obligations in the nature of a guarantee;
- (b) the guarantee meets the criteria for guarantees prescribed by regulations and is in compliance with the fiscal responsibility principles and the financial objectives;
- (c) the guarantee is within the financial limit, if any, set by the National Assembly; and
- (d) the National Assembly has passed a resolution formally approving the giving of the guarantee after examining whether such guarantee is in the public interest and after considering if the financial position of the person whose obligations are being guaranteed supports the giving of the guarantee.

(2) The government shall not be liable for any implied or implicit guarantees asserted by any individual, organisation or entity and shall only be liable for formal guarantees given in accordance with this Act.

(3) Every resolution of the National Assembly referred to in this section shall be published in the Gazette within two weeks of the resolution being made.

(4) The Cabinet Secretary responsible for finance shall, within 14 days after the giving of the guarantee, indemnity, or security, publish and submit to the National Assembly a statement—

- (a) that such a guarantee, indemnity, or security has been given; and
- (b) containing details relating to that guarantee, indemnity, or security, including the entity involved, the timeframe, the nature of any guarantee or indemnity, a risk assessment, and any other information required by regulations.

(5) Any sums required for fulfilling any guarantee under this Act shall be charged on and paid out of the Consolidated Fund without any further appropriation than this Act, and any sum received by way of repayment of any sum so paid into and form part of the Consolidated Fund.

(6) Where any moneys are paid out of the Consolidated Fund pursuant to this Act, the Cabinet Secretary responsible for finance shall lay before the National Assembly a report on the payment specifying the guarantee in respect of which the payment was made and the circumstances giving rise to the payment and such further information as the Cabinet Secretary considers appropriate.

(7) In order to enable the payment of any sum

required for fulfilling any guarantee under this Act to be duly made, a certificate under the hand of the Attorney General specifying the sum so required to be paid and certifying the payment thereof shall be sufficient authority to the Controller of Budget for passing such sums without further appropriation.

(8) Any money paid by the Cabinet Secretary responsible for finance pursuant to any guarantee, indemnity, or security given under this Act or any other Act and the expenses associated with the guarantee, indemnity, or security shall constitute a debt due to the government from the person, entity, or government in respect of whom the guarantee, indemnity, or security was given, and shall be recoverable.

(9) Subject to the terms of the instrument authorising the guarantee, indemnity or security, the debt shall be repaid over such period of time, and on such terms and conditions, as the Cabinet Secretary responsible for finance specifies.

(10) Any guarantee given under this Act shall be given in writing in the name of the government and shall be signed on behalf of the government by the Cabinet Secretary responsible for finance or by a person authorised in writing by the Cabinet Secretary.

(11) Before giving any guarantee under this section, the Cabinet Secretary responsible for finance shall prepare and submit before the National Assembly a sessional paper specifying the covenants, the performance of which is to be guaranteed and, where the covenant is for the repayment of a loan, the amount of the loan, the terms and conditions as to interest and repayment in respect of the loan, the government's total contingent liability under guarantees given under this Act and any further information which the Cabinet Secretary responsible for finance considers relevant.

(12) In addition to the reporting required in this Act,

the Cabinet Secretary responsible for finance shall publish a report within two months after the end of the financial year describing the guarantees given during that financial year.

Procurement and public private partnerships.

83. (1) For the purposes of this Act, all procurement of goods and services shall be carried out in accordance with Article 227 of the Constitution and the Public Procurement and Disposal Act.

(2) The National Treasury shall be responsible for reviewing existing legislation regarding government procurement, including public private partnership arrangements, with a view to proposing amendments or new legislation applicable to both levels of government in order to ensure compliance with Article 227 of the Constitution.

Asset management.

84. (1) The accounting officer of a government entity shall be responsible for the management of the assets of the entity and shall manage the assets to ensure that the government achieves value for money when acquiring, using and disposing of government assets.

(2) The accounting officer of a government entity shall have the power to dispose of assets at the best obtainable price and lowest possible cost and ensure that the proceeds from all asset disposals are banked into a government bank account.

(3) The accounting officer of a government entity shall have adequate systems and processes in place to plan for assets, procure assets, account for assets, maintain assets, store idle assets and dispose of assets, including an asset register that is current, accurate and available for inspection at any time by the National Treasury or the Auditor-General.

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

(5) The National Treasury may issues instructions on asset management and shall monitor the management of assets by government entities.

Internal audit.

85. (1) there shall be an internal audit unit which shall be performed in accordance with international best practices.

(3) The internal audit functions shall include—

- (a) providing analyses of the entity's operations and procedures, and making recommendations regarding the same with a view to improving the performance (both financial and non-financial) and accountability of the entity;
- (b) determining whether internal systems and financial controls of the entity are adequate and effective;
- (c) verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;
- (d) ensuring that appropriate institutional policies and procedures and good business practices are followed by the entity; and
- (e) evaluating the adequacy and reliability

of information available to management for making decisions with regard to the entity and its operations.

(4) Every government entity shall establish an internal audit committee whose functions shall be prescribed by regulations.

PART VIII- STATE CORPORATIONS

Establishment and dissolution.

86. No state corporation shall be established or dissolved without first taking into account any recommendations of the National Treasury regarding the financial implications of the establishment or dissolution of the state corporation.

Monitoring by National Treasury.

87. The National Treasury shall monitor the financial performance of state corporations and any non-financial performance related to their financial performance, including—

(a) analyzing financial and other reports that are required to be prepared under this Act or the State Corporations Act;

(b) reporting to the Cabinet Secretary responsible for finance on performance issues; and

(c) recommending improvements in the performance of a state corporation.

Annual report by National Treasury.

88. (1) At the end of every financial year, the National Treasury shall consolidate, publish and publicise a report summarizing the extent of government involvement or investment in, or funding of, all state corporations.

(2) Every state corporation shall, for the financial

year of the report referred to in subsection (1), provide the following information to the National Treasury to enable the National Treasury to prepare the report—

- (a) the date of incorporation and objects of the corporation;
- (b) the amount of government shareholding, directly or indirectly, in the corporation;
- (c) any changes in the shareholding of the corporation during the financial year;
- (d) the amount of any funding provided by the government to the corporation during the financial year;
- (e) the amount of any loans made by the government to the corporation, and the amount of any guarantees issued by the government in respect of the corporation, during the financial year;
- (f) the cumulative amount of undischarged loans and guarantees;
- (g) the amount of the profit or loss of the corporation, and the amount of any dividends declared or paid, during the financial year;
- (h) an assessment of the financial and related non-financial performance of the corporation for the financial year; and
- (i) a cost-benefit analysis of the government's continued involvement or investment in, or funding of, the corporation.

(3) The National Treasury shall submit the report referred to in subsection (1) to the Controller of Budget within three months after the end of the relevant financial year.

PART IX – ENFORCEMENT

Financial
misconduct.

89.A public officer commits an offence of financial misconduct if, without lawful authority under this Act or otherwise, they wilfully or negligently—

- (a) borrow money on behalf of the government, or repay or convert existing loans;
- (b) issue public securities, or vary their terms and conditions;
- (c) open a bank account in the name of the government;
- (d) lend money on behalf of the government;
- (e) issue guarantees or indemnities on behalf of the government;
- (f) issue securities for loans made to the government;
- (g) dispose of government property;
- (h) refuse or neglect to pay any public money into a government bank account;
- (i) incur expenditures or make commitments;
- (j) fail to deliver to the government a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act;
- (k) refuse or fail to produce any information in their possession or under their control in relation to the financial management,

financial performance, or banking activities of a government entity or in relation to the management or control of any government asset or liability when required to do so, except where such refusal or failure is required or authorized by any written law;

- (l) fail to keep proper records or conceal, or wrongfully destroy, information that is required to be recorded;
- (m) resist or obstruct any person acting in the discharge of that person's functions or duties or in the exercise of that person's powers under this Act;
- (n) make any statement or declaration, or give any information or certificate that is required under this Act or by National Treasury instructions, knowing it to be false or misleading; or
- (o) do any act for the purpose of procuring for the public officer or any other person or organisation—
 - (i) the improper payment of any public money, or
 - (ii) the improper use of any public resource.

Disciplinary
proceedings

90. An alleged offence of financial misconduct under this Act shall be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that person and any regulations made under this Act.

- Other offences. **91.** Every public officer commits a criminal offence if, without lawful authority under this Act or otherwise, they wilfully or negligently—
- (a) take unlawful possession of public funds or assets;
 - (b) misappropriate public funds or assets;
 - (c) provide inaccurate financial information or conceal information on public finances to obtain a financial benefit for the public officer or another person; or
 - (d) engage in corrupt acts including soliciting or receiving inducements.
- Penalties. **92.** (1) Any person who commits an offence against sections 89 or 91 is liable on conviction to a fine not exceeding Kshs 10,000,000 or to term of imprisonment not exceeding 5 years, or to both such fine and imprisonment.
- Duty to report. **93.**(1) The Principal Secretary to the National Treasury and the Principal Secretary to the County Treasury, as the case may be, has responsibility for ensuring that any alleged offence under this Act that is brought to his or her attention is reported to the relevant authority.
- (2) If the Principal Secretary to the National Treasury or the Principal Secretary to the County Treasury fails to report an alleged offence as required by subsection (1), he or she shall be subject to disciplinary action.
- Responsibility for losses. **94.** (1) Every public officer shall be personally liable for any loss sustained by the government due to acts of fraud or negligence on the part of that person or officer.
- (2) The government may claim damages arising from

the fraud or negligence of a public officer who—

- (a) is personally liable for a loss, under subsection (1);
or
- (b) is responsible for a loss sustained by the government as a result of misconduct under section 89 or an offence under section 91.

Institutional
sanctions.

95. (1) The Cabinet Secretary responsible for finance may apply sanctions to a government entity that—

- (a) approves the contracting of debt beyond any debt limits provided under this Act;
- (b) defaults on a loan;
- (c) provides inaccurate information to public officers on financial matters;
- (d) issues a guarantees without proper authorisation;
- (e) issues a guarantees for an amount in excess of any limits set under this Act;
- (f) creates liabilities in excess of its ability to finance those liabilities; or
- (g) fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General.

(2) The Cabinet Secretary responsible for finance may apply any the following sanctions to a government entity which has done anything referred to in subsection (2)(a) to (f), or has failed to meet the requirement in subsection (2)(g)—

- (a) impose additional reporting requirements to

those required by this or any other written law;

- (b) suspend the ability to use reallocation powers;
- (c) withhold funds, subject to the limitations in the Constitution;
- (d) suspend all authorisations to borrow;
- (e) treat any debt defaults as a charge on future revenues;
- (f) temporarily place National Treasury staff or appointees in the government entity to undertake financial management functions.

(3) If a County Government incurs debt in excess of an ability to service such debt or in contravention of the debt level approved by the National Government, the National Treasury may require the County Government to adhere to a program of debt reduction determined by the National Treasury.

Publication of offences and offenders.

96. The National Treasury and the County Treasury, as the case may be, shall make public in a timely manner—

- (a) the name, position, offence and sentence for every person who is convicted of an offence under this Act; and
- (b) the name of every government entity in respect of which a sanction under section 95 has been applied, and the nature of the sanction that has been applied.

PART X – MISCELLANEOUS

- Regulations. **97.** (1) The Cabinet Secretary responsible for finance may make regulations—
- (a) prescribing anything that is required or is permitted to be prescribed under this Act; or
 - (b) generally, for the better carrying out of the provisions of this Act.

- Repeals. **98.** (1) The following Acts are repealed—
- (a) the Civil Contingencies Act;
 - (b) the Exchequer and Audit Act;
 - (c) the External Loans and Credit Act;
 - (d) the Financial Management Act;
 - (e) the Government Financial Management Act;
 - (f) the Guarantee (Loans) Act;
 - (g) the Internal Loans Act; and.
 - (h) the Paymaster General Act

Consequential amendments. **99.** The Acts indicated in the First Schedule are amended in the manner set out in that Schedule.

Transitional provisions. **100.** The provisions of the Second Schedule apply.

FIRST SCHEDULE (section 99)

CONSEQUENTIAL AMENDMENTS

Interpretation and General Provisions Act. **1.** Section 3 of the Interpretation and General Provisions Act is amended as follows—

- (a) by repealing the definition “accounting officer” and replacing it with the following—

“ “accounting officer” means an accounting officer within the meaning of section 3 of the

Public Finance Management Act, 2011;”;

(b) in the definition “Consolidated Fund” by deleting the words “of Kenya”;

(c) by repealing the definition “the Constitution” and replacing it with the following—

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

(d) by repealing the definition “receiver of revenue” and replacing it with the following—

“ “receiver of revenue” means a receiver of revenue within the meaning of section 3 of the Public Finance Management Act, 2011;”;

(v) by repealing the definition “Treasury” and replacing it with the following—

“ “Treasury” means the National Treasury within the meaning of section 3 of the Public Finance Management Act, 2011;”.

Permanent Secretary to the Treasury (Incorporation) Act.

2. The Permanent Secretary to the Treasury (Incorporation) Act is amended by deleting the words “Permanent Secretary” wherever they occur and substituting the words “Principal Secretary”.

SECOND SCHEDULE (section 100)

TRANSITIONAL PROVISIONS

Secondment.

1. in accordance with Article 15 of the Sixth Schedule and Article 190 (1) of the Constitution, the National Treasury shall second any staff to the county as deemed necessary to support the county in performing its functions under

this Act.

Cabinet Secretaries.

2. Persons who hold office as government Ministers shall be considered to be Cabinet Secretaries for the purposes of this Act until such time as Cabinet Secretaries are appointed under Article 152(2) of the Constitution Act.

National Treasury.

3. (1) The entity known as the Treasury as it existed immediately before the coming into operation of this Act shall cease to exist and its operations shall be absorbed in the National Treasury.

(2) Public officers in the Treasury as it existed immediately before the coming into operation of this Act shall become public officers in the National Treasury.

Principal Secretary to the National Treasury.

4. (1) The office of Permanent Secretary to the Treasury shall cease to exist on the coming into operation of this Act and the person who held that position immediately before the coming into operation of this Act shall become the Principal Secretary to the National Treasury until such time as another person is appointed to the position of Principal Secretary to the National Treasury.

(2) Any reference in written law to the Permanent Secretary to the Treasury shall be construed as a reference to the Principal Secretary to the National Treasury.

Parliamentary Budget Office.

5. The Parliamentary Budget Office established by the Fiscal Management Act, 2009 shall remain in being until such time as the Parliamentary Service Commission constitute the Parliamentary Budget Office pursuant to Article 127(6)(b) of the Constitution.

Accounting officers.

6. Accounting officers appointed under the Government Financial Management Act, 2004 shall continue in office until such time as other accounting officers are designated under this Act in their place.

Receivers of
revenue.

7. Receivers of revenue appointed under the Government Financial Management Act, 2004 shall continue in office until such time as other receivers of revenue are appointed under this Act in their place.

Contingencies
Fund.

8. (1) The Civil Contingencies Fund continued in operation under the Civil Contingencies Fund Act shall cease to exist on the coming into operation of this Act and any money in that Fund shall be paid into the Contingencies Fund established by Article 208 of the Constitution.

(2) Any reference in written law to the Civil Contingencies Fund shall be construed as a reference to the Contingencies Fund established by Article 208 of the Constitution.

MEMORANDUM OF OBJECTS AND REASONS

Dated the....., 2011.

UHURU KENYATTA,
Deputy Prime Minister and Minister for Finance.